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In the

Supreme Court of the United States

OCTOBER TERM, 1962

No. 543

CHARLES D. STUART, *et al.*,
Appellants.

v.

WILL WILSON, ATTORNEY GENERAL OF TEXAS,
and
TEXAS STATE BOARD OF MEDICAL EXAMINERS,
and
HENRY WADE, DISTRICT ATTORNEY OF DALLAS COUNTY, TEXAS,
Appellees.

On Direct Appeal From the United States District Court for the Northern District of Texas, Dallas Division

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

To the Honorable Chief Justice and Justices of the Supreme Court of the United States:

Respectfully presented herewith by the Appellants is the jurisdictional statement in this case, to-wit:

OPINION BELOW AND REFERENCE TO PREVIOUS PROCEEDINGS

Appended hereto as Appendix I and II, respectively, is the Opinion and Judgment in this case, rendered by a specially convened three-judge United States District Court in the Northern District of Texas, Dallas Division. The Honorable John R. Brown, Circuit Judge, presided, and the Honorable Joe E. Estes and the Honorable Sarah T. Hughes, both of whom are United States District Judges, comprised the other two members of this Court. It is unknown at this time if such opinion and judgment will be reported officially or unofficially. Also appended hereto are reference to previous proceedings in this same cause, as follows: The Original Order of Dismissal in this case from the United States District Court for the Northern District of Texas is unreported and is appended as Appendix III herein; this cause was at one time dismissed by this Honorable Supreme Court of the United States, which order is reported at 361 U. S. 232, 80 S. Ct. 368, and is printed in Appendix IV hereto; a motion for rehearing was denied in connection with the Court's original opinion in this case on February 29, 1960, and such action is reported at 362 U. S. 906, 80 S. Ct. 609, and is appended herein as Appendix V. This Honorable Supreme Court of the United States amended its original order on April 25, 1960, which order is reported at 362 U. S. 958, 80A S. Ct. 874, and is printed herein as Appendix VI. Initially, a dual appeal has been taken in this case from the aforesaid original order of the United States District Court for the Northern District of Texas, which had dismissed this

case, and the Court of Appeals for the Fifth Circuit dismissed such appeal to that Honorable Court, which order of dismissal is unreported and is printed in Appendix VII hereto. The order of the Honorable Court of Appeals for the Fifth Circuit reinstating such appeal is unreported and printed herein as Appendix VIII. The opinion of the Honorable Court of Appeals for the Fifth Circuit denying the Petitioners' Second Motion to Dismiss is reported at 282 F. 2d 539, and is printed as Appendix IX herein. The Honorable Court of Appeals for the Fifth Circuit reversed and remanded this cause back for trial before a special three-judge Federal District Court on August 11, 1961, and such opinion is reported at 293 F. 2d 914, and it is printed as Appendix X hereto; and the Judgment thereon of the said Honorable United States Court of Appeals is printed herein as Appendix XI. The Appellees herein filed a petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit; and this Honorable Supreme Court of the United States denied such petition on December 4, 1951, which action is reported in 368 U. S. 927, 82 S. Ct. 362, which opinion is printed herein as Appendix XII.

JURISDICTION

A concise statement of the grounds on which the jurisdiction of this Court is invoked is as follows:

The nature of this proceeding is that the Appellants as practitioners of Naturopathy, a recognized limited, narrow, defined scope of the healing art, who practice drugless, non-surgical medicine, contend that it is *unreasonable* to require

them to study, qualify and be licensed as general medical physicians and surgeons before they can practice their limited natural methods of healing. Appellants grant that they should be; and they express their desire that they be controlled by *reasonable* State regulations. Appellants conjunctively and in the alternative contend that such unreasonable regulations puts them out of business and thus violates the Anti-Trust Laws and the Laws against Monopolies and Combinations in Restraint of Trade; or conjunctively and in the alternative, Appellants contend that such regulations which apply to general medical practitioners and surgeons do not apply to Appellants and that their civil rights are being abused by the Appellees.

This case proceeded to trial on the ninety-two (92) Appellants' *Second Amended Complaint and Petition for Permanent* Injunction and Temporary Restraining Order and Temporary Injunction; and the case was heard on its merits before a three-judge Special District Court; and such Special Three-Judge Federal District Court entered a final judgment adverse to the Appellants. The gist of the Appellants' action is that they are Naturopathic physicians pursuing a lawful occupation, and the Appellees under color of a set of Texas State Statutes and or a Texas State constitutional provision are depriving and attempting and or threatening to deprive the Appellants of their Federal Constitutional and statutory rights, privileges and immunities to pursue their lawful occupation. The Appellants contend that the Texas Statutes (The Texas Medical Practice Act, Articles 4495-4512, Texas Revised Civil Statutes, 1925, as amended to date) (See

Appendix XIII) and the Texas Constitutional Provision (Section 31 of Article 16 of the Constitution of the State of Texas, 1876) (See Appendix XIV), under color of which the Appellees are depriving, attempting and or threatening to deprive Appellants of their rights, privileges and immunities to pursue their lawful occupation, are contrary to, in contravention of, and violate the provisions of the Constitution and laws of the United States, particularly the Preamble, Section 2 of Article IV, and Article VI of the Constitution of the United States, and Section 1 of the XIV Amendment thereto, the Anti-Trust laws and laws against monopolies and combinations in restraint of trade, (Title 15, U.S.C.A., Sections 1, 2, 4, 7, 9, 13, 14, 15, 21, 26 and 44), and the Civil Rights Act of the United States (Title 42, U.S.C.A., Sections 1983-1985). In the alternative, Appellants allege that they are not subject to nor controlled by the said Texas Medical Practice Act, under color of which the Appellees are depriving, attempting and threatening to deprive the Appellants of their rights, privileges and immunities guaranteed them by the Constitution and its amendments and by the laws of the United States. The Appellant's action was instituted under the provisions of the Federal Civil Rights Acts, Title 42, U.S.C.A., Sections 1983-1985 and the requirements for a three-judge court, Title 28, U.S.C.A., Sections 2281-2284.

The date of the judgment sought to be reviewed (Appendix II) is July 23, A.D. 1962. There were no rehearings held in the case. The notice of appeal was filed on August 22, A.D. 1962, in the United States District Court for the Northern District of Texas, Dallas Division.

The statutory provision which confers jurisdiction of this appeal on the Supreme Court of the United States is Title 28, U.S.C.A., Section 1253.

This case is brought under and falls within both the Civil Rights Statutes (Title 42, U.S.C.A., Sections 1983-1985) and the statutes providing for an injunction against enforcement of an unconstitutional state statute which requires a three-judge court (Title 28, U.S.C.A., Sections 2281 and 2284). Since this case comes within the purview of the aforesaid statutes, this case is reviewable by the Supreme Court (Title 42, U.S.C.A., Section 1984); and the Supreme Court has jurisdiction of a direct appeal in this case because this appeal is from an order denying, after notice and hearing, an interlocutory and permanent injunction in a civil action which is required by an Act of Congress to be heard and determined by a District Court of three judges (Title 42, U.S.C.A., Section 1253). Because it is believed that the explicit and categorical recitations of the statutes are sufficient, no cases are cited to sustain the jurisdiction of the Supreme Court to review this case on direct appeal.

Involved is the validity of the statutes of the State of Texas known as the Texas Medical Practice Act, Articles 4495-4512, Texas Revised Civil Statutes 1925, as amended to date (the pertinent articles are set forth in Appendix XIII), and which are found in Volume 12A on pages 524-559, and in the 1961 Cumulative Annual Pocket Part thereto on page 67, of Vernon's Annotated Revised Civil Statutes of the State of Texas, Revision of 1925, as amended to date. Also involved is the validity of Section 31 of Article 16 of

the Constitution of the State of Texas of 1876, as amended to date (See Appendix XIV) which is found on page 246 of Volume 3 of Vernon's Annotated Constitution of the State of Texas, publication of 1955, with annual pocket parts.

QUESTIONS PRESENTED BY THE APPEAL

The questions presented by the appeal are as follows;

1. Is it unreasonable to require the Appellants (Naturopaths) to obtain a license as a general medical practitioner or surgeon (Allopath) before they can practice the recognized limited healing art known as Naturopathy?

2. Is a monopoly created when the only statute permitting the practice of medicine in the State of Texas is a statute designed specifically for only the Allopathic System or school of medicine?

3. Are the Appellants (Naturopaths) practicing medicine within the meaning of the Texas Medical Practice Act, Article 4510?

4. Are the Appellants insisting on a right to practice medicine as defined by the aforesaid Article 4510 without complying with the requirements of the Texas Medical Practice Act for obtaining a license to practice medicine?

5. Do the requirements of learning, skill and examination provided by the aforesaid Texas Medical Practice Act for obtaining a license to practice medicine bear a direct, substantial and reasonable relation to the practice of the healing art called "Naturopathy"?

6. Does the Texas Medical Practice Act, as administered, discriminate against the Appellants and violate their Constitutional or legal rights?

7. Is the Texas Medical Practice Act, as interpreted and enforced by the Courts of Texas unreasonable, discriminatory or unconstitutional in its operative effect when applied to the Appellants as Naturopathic physician.

8. Does the Texas Medical Practice Act, as administered, violate the Constitution of the United States, the admendments thereto, the Constitution of the State of Texas, the Anti Trust Laws of the United States, the Civil Rights Laws of the United States, or any other laws of the United States or of the State of Texas?

9. Are the Appellants entitled to relief in this action?

10. Did the trial court abuse its discretion in making the findings and conclusions contained in and rendering its order and judgment dated July 23, 1962, dismissing this action on its merits?

11. Did the trial court abuse its discretion in finding that the Appellants (Naturopaths) are practicing medicine as defined by Article 4510 of the Texas Medical Practice Act, which Article defines the allopathic or regular practice of medicine, and not naturopathy?

12. Did the trial court abuse its discretion in finding that the Appellants are insisting on a right to continue the general practice of medicine and surgery as defined in the Texas Medical Practice Act?

13. Did the trial court abuse its discretion in finding that the requirements of learning, skill, and examination provided by the Texas Medical Practice Act for obtaining a license to practice medicine bear a direct, substantial and reasonable relation to the practice of the healing art called "Naturopathy"?

14. Did the trial court abuse its discretion in finding that the Texas Medical Practice Act, as administered, does not discriminate against the Appellants or violate any of their Constitutional or legal rights?

15. Did the trial court abuse its discretion in concluding that the Texas Medical Practice Act, as interpreted by the Courts of Texas is not unreasonable, discriminatory, nor unconstitutional in its operative effect when applied to the Appellants as "Naturopaths"?

16. Did the trial court abuse its discretion in concluding that the Texas Medical Practice Act, as administered, does not violate the Constitution of the United States, the Constitution of the State of Texas, the Ani Trust Laws of the United States, the Civil Rights laws of the United States, nor any other laws of the United States or of the State of Texas?

17. Did the trial court abuse its discretion in concluding that the Appellants are not entitled to any relief in this action?

18. Did the trial court abuse its discretion in dismissing this case?

19. Does the overwhelming and greater weight and preponderance of the evidence, as well as the uncontradictory evidence in this case, show that the Appellants are practicing only the limited specialty healing art of Naturopathy, and not the general practice of medicine and surgery as defined in Article 4510 of the Texas Medical Practice Act?

20. Does the overwhelming and greater weight and preponderance of the evidence, as well as the uncontradictory evidence in this case, show that the Appellants as naturopaths, insist on the right to practice only the limited specialty healing art of naturopathy, and not the general practice of medicine and surgery as defined by Article 4510 of the Texas Medical Practice Act, without complying with the requirements of such act for obtaining a license to practice medicine?

21. Does the overwhelming and greater weight and preponderance of the evidence, as well as the uncontradictory evidence in this case, show that it is unjust, unfair, and unreasonable to require a person who desires to practice naturopathy to have to pass the examination given by the Texas State Board of Medical Examiners to applicants for a license to practice general medicine and surgery?

22. Does the overwhelming and greater weight and preponderance of the evidence, as well as the uncontradictory evidence in this case, show that the Texas Medical Practice Act, as administered, discriminates against the Appellants, and violates their Constitutional and legal rights?

23. Does the overwhelming and greater weight and preponderance of the evidence, as well as the uncontradictory evidence in this case, show that the Texas Medical Practice Act, as interpreted and enforced by the Courts of Texas, is unreasonable, discriminatory and unconstitutional in its operative effect when applied to the Appellants as Naturopathic physicians?

24. Does the overwhelming and greater weight and preponderance of the evidence, as well as the uncontradictory evidence in this case, show that the Texas Medical Practice Act, as administered, violates the Constitution of the United States, the Constitution of the State of Texas, the Civil Rights laws of the United States, and other laws of the United States and of the State of Texas?

25. Does the overwhelming and greater weight and preponderance of the evidence, as well as the uncontradictory evidence in this case, show that the Appellants are entitled to relief in this action, and that their cause must not be dismissed?

26. Are the Appellants entitled to relief in this case because the fundamental rights of the Appellants guaranteed by the Constitution of the United States of America have been violated and are threatened to be violated because the Texas Medical Practice Act (Articles 4495-4512, Texas Revised Civil Statutes 1925, as amended to date) (See Appendix I), as interpreted and enforced by the Texas Courts and the Appellees herein, and the acts and conduct of the Appellees in prosecuting and threatening to prosecute suits against

Appellants under color of such Act to enjoin Appellants from practicing their profession of the specialty of Naturopathy under the guise of prohibiting them from practicing the unlimited and all-inclusive practice of medicine or allopathy abridges the Appellants' privileges and immunities, deprives them of property without due process of law, and denies them the equal protection of the laws, in violation of Article 4, Section 2, and Article 6 of the Constitution of the United States of America, and Section 1 of the 14th Amendment thereto, and where the injunction sought for by Appellants is provided for under the Civil Rights Acts, Title 42, U.S.C.A. Sections 1983-1985?

27. Is Naturopathy a recognized limited healing art whereby the practitioner thereof diagnoses and treats patients to stimulate and restore natural bodily processes and functions using a system of practice that employs physical, mechanical, chemical, and psychological methods and who utilizes dietetics, exercise, manipulation, chemical substances naturally found in or produced by living bodies, and healing properties of air, light, water, heat, and electricity, and who provides for care of bodily functions, processes or traumas, and treats nervous or muscular tension, abnormalities of tissues, organs, muscles, joints, bones, and skin, pressure on nerves, blood vessels, and lymphatics, and who assist patients in making adjustments of a mental and emotional nature and which limited healing art excludes the use of major surgery, x-ray, and radium for therapeutic purposes, and the use of drugs with the exception of those substances which are assimilable, contain elements or compounds which are components of bodily tissues, and are

usable by body processes for maintenance of life, as contra-distinguishable from the Allopathic (all-inclusive) practice of medicine such as defined in the said Texas Medical Practice Act.

28. Is Article 16, Section 31 of the Constitution of the State of Texas which provides, "The Legislature may pass laws prescribing the qualifications of practitioners of medicine in this State, and to punish persons for mal-practice, but no preference shall ever be given by law to any schools of medicine," unconstitutional as being repugnant to the Constitution of the United States of America and Amendments thereto, because the Texas Courts have construed such Texas Constitutional Provision as meaning that the Legislature of the State of Texas can require Naturopathic physicians to take the same examination as the Allopathic physicians and general medical practitioner and surgeon to obtain a certificate to practice his profession, when the Allopathic school of medicine and the general practice of medicine and surgery is entirely separate and distinct from the Naturopathic school of medicine and when the Naturopathic school of medicine is a limited and special branch of the healing art and when many of the Allopathic and general medical and surgical practices are repugnant to and abhorred by the Naturopathic school of medicine, and the Texas Courts have further construed said provision of the Texas Constitution to mean that the Naturopath has to be examined on synthetic toxic drugs, major surgery, and the use of x-ray and radium equipment for therapeutic purposes when such practice and subjects are not included within nor embraced by the Naturopathic school

of medicine and when the interpretation of said provision of the Texas Constitution is meant to mean that the Naturopaths cannot practice their profession whose theories, philosophies and practices have been developed to a high degree of therapeutic efficiency by the Naturopaths persistently maintaining the efficiency of their own philosophy, because to practice Naturopathy in Texas according to said Constitutional provision, the Texas Courts have held that the Naturopaths cannot be examined in his own philosophy and theories of their school of medicine but must turn their backs on their own theories, philosophies, and school of medicine, and study and be examined on the theories, philosophies, and school of medicine of the Allopaths and the general medical practitioner and surgeon, and such requirement is arbitrary, discriminatory, and therefore unconstitutional in its operative effect because it violates Section 1 of the 14th Amendment to the Constitution of the United States of America which says that, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

29. Is the Naturopathic profession whose fundamental concept is largely nutritional, i.e. to build, balance and normalize the human body and whose practitioners place considerable emphasis upon the science of nutrition and the use of natural food in their natural states and which profession is not of itself inimical to the health and welfare of

the people and whose practitioners are not nuisances per se, a lawful profession; and is the right to follow and practice such profession a property right and one of the fundamental rights of citizenship; and is such right to follow and practice the Naturopathic profession, business or occupation, a right protected by the Constitution of the United States of America within the meaning and intent of the provisions of Section 1 of the 14th Amendment of the Constitution of the United States of America which says, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law," and is such right included within the constitutional guaranty, set forth in its preamble, to the right to liberty and the pursuit of happiness?

30. Is the Texas State Board of Medical Examiners authorized to issue licenses to the practitioners of the limited field of Naturopathy?

31. Is Naturopathy a nuisance per se?

32. Is the practice of Naturopathy inimicable to the health and welfare of the people?

33. Can the Appellees force the Appellants to qualify as a general physician and surgeon in order to practice the more limited system of healing known as Naturopathy?

34. Is Naturopathy a recognized lawful field of the healing arts?

35. Do the Appellees have the authority to prohibit the practice of the limited system of healing known as Naturopathy?

36. Is the said Texas Medical Practice Act, as interpreted and enforced by the Courts of Texas and the Appellees herein, unconstitutional because it violates Section 2 of Article 4 of the Constitution of the United States of America which provides that, "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States"?

37. Is the said Texas Medical Practice Act, as interpreted and enforced by the Courts of Texas and the Appellees herein, unconstitutional because it violates Article 6 of the Constitution of the United States of America which provides that, "This Constitution and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land; and the judges in every State shall be bound thereby; anything in the Constitution and laws of any State to the contrary not withstanding"?

38. Is the said Texas Medical Practice Act, as interpreted and enforced by the Courts of Texas and the Appellees herein, arbitrary and discriminatory and unconstitutional in its operative effect when applied to the Appellants who are Naturopathic physicians, and is said Texas Medical Practice Act, unconstitutional because it violates Section 1 of the 14th Amendment to the Constitution of the United States of America which says that, "No State shall make or enforce any law which shall abridge the privileges or immunities of

citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law"?

39. Is the aforesaid Texas Medical Practice Act unconstitutional insofar as it applies to the Appellants as Naturopaths, because its requirement that the Appellants qualify as general medical practitioners before they can practice their useful profession of Naturopathy is so arbitrary and unreasonable as to amount to a denial of due process, equal protection of the laws and a deprivation of their rights, privileges and immunities to pursue their lawful occupation as guaranteed them under the Fourteenth Amendment and other Constitutional provisions?

40. Is the Texas Medical Practice Act, as interpreted and enforced by the Courts of Texas and the Appellees herein, void and unenforceable as class legislation because it violates the "Civil Rights Act" of the United States of America (Title 42, U.S.C.A. Section 1983) in any of the following respects:

a. By arbitrarily requiring Naturopaths to pass examinations in non-naturopathic subject in order to qualify to practice Naturopathy?

b. By prohibiting the practice of Naturopathy without showing it to be detrimental to the public or inherently harmful?

c. By unfairly discriminating against Naturopaths in the conferring of exclusive jurisdiction and control over these non-allopathic medical practitioners on their allopathic medical competitiors?

d. By creating a monopoly by giving allopaths ascendency and control over the limited school of Naturopathy and the power to prevent naturopathic physicians from practicing?

e. By usurping the power of the State to pass on the qualifications of, issue license to, and control of naturopathic physicians?

f. By restricting the rights of the citizens who have faith in and desire treatments by methods not based on the philosophy of that organization (allopathic school) practicing under the Texas Medical Practice Act?

g. By usurping power to suspend a law in violation of Article 1, Section 28 of the Constitution of the State of Texas?

41. Are the requirements of the Texas Medical Practice Act which compel the Appellants, Naturopaths, to take and pass an examination given for the general medical practitioner and surgeon before the Appellants can practice their limited recognized specialty of the healing art known as Naturopathy, unconstitutional and invalid as to Appellants within the purview of the *Preamble, Sec. 2 of Art. IV, and Art. VI of the Constitution of the United States, and Sec. 1 of the 14th Amendment thereto*, the Anti Trust laws and laws against monopolies and combinations in restraint of trade as prescribed in *Title 15, USCA, Sections 1, 2, 4, 7, 9, 13; 14 to 16, 21, 26 and 44* because such requirements are:

a. That the examination which must be taken is on many subjects not practiced by the Naturopath and in some instances on subjects abhorred by and contrary to the tenents and teachings of the Naturopathic School of Medicine; and in particular, the Naturopath excludes from his practice the use of major surgery, x-ray and radium for therapeutic purposes, and the use of toxic

drugs, and the allopathic examination covers not only these major factors used in the allopathic system of treatment but also the examination is given in much more detail on all of these subjects and in particular if a person is qualified to practice major surgery;

b. That the examination which must be taken and passed is given by a Board of Medical Examiners which follows the allopathic school of medicine and is not prepared, equipped, nor learned in the Naturopathic School of Medicine, and which Board is not authorized to issue a license to practice Naturopathy;

c. An arbitrary interference with the private occupation of Naturopathy under the guise of protecting public interest;

d. An imposition of unusual and unnecessary restrictions upon the lawful occupation of Naturopathy?

e. An arbitrary, unreasonable abridgment of Appellants' citizenship rights and privileges and an invasion of their liberty to engage in the lawful occupation of Naturopathy in that said requirements are unreasonable, onerous burdens impossible to perform, not fairly applicable and prohibitive because such requirements are unreasonable to determine if a person is qualified to practice the limited specialty of the healing art known as Naturopathy;

f. Such that have an unreasonable relation to the standards necessary to qualify a person to practice the limited specialty of the healing art known as Naturopathy;

g. So unreasonable as to interfere with the property and personal rights of Naturopaths, unnecessarily and arbitrarily;

h. An unreasonable attempt to exercise the authority vested in the Legislature in the public interest to establish rules and regulations for the practice of the limited specialty in the healing art known as Naturopathy;

i. Such that have no reasonable relation to the objective of establishing rules and regulations for the practice of the limited specialty of the healing art known as Naturopathy; and,

j. Are creative of a monopoly and formative of a restraint of trade in that such requirements provide for and foster only the allopathic school of medicine.

42. Does the Texas Medical Practice Act, as interpreted and enforced by the Courts of Texas and the Appellees herein, constitute an invalid exercise of the police power in that it bans or prohibits the practice of Naturopathy, a successful recognized harmless system of healing, under the guise of regulating or controlling it?

43. Does the said Texas Medical Practice Act, as interpreted and enforced by the Courts of Texas and the Appellees herein, arbitrarily interfere with the rights of the Appellants herein by imposing unnecessary restrictions upon their pursuing a lawful trade and occupation, to wit: the practice of Naturopathy?

44. Does the Texas Medical Practice Act, as interpreted and enforced by the Courts of Texas and the Appellees herein, violate and repudiate the "due process" and "equal protection" guarantees of the Law of the Land?

45. Is that part of Section 31 of the Constitution of the State of Texas, 1876, which provides as follows:

"But no preference shall ever be given by law to any schools of medicine."

as interpreted and enforced by the Courts of the State of Texas and the Appellees herein, void as being contrary to

the Constitution of the United States of America and the Federal Civil Rights Statutes, because among other things the Supreme Court of Texas has held that the aforesaid portion of the Texas Constitution is construed to mean that a Naturopath, who follows a limited and separate school of medicine from the allopathic, allopathic-homeopathic, allopathic-electric, and allopathic-osteopathic schools of medicine, must obtain a license from the Texas State Board of Medical Examiners, which Board is composed of followers of allopathic, allopathic-homeopathic, allopathic-electric, allopathic-osteopathic schools of medicine, and because such Board examines only in the aforesaid schools of medicine and such Board is not prepared, equipped nor learned in the naturopathic school of medicine, and which Board is not authorized to issue a license to practice Naturopathy?

46. Is the aforesaid portion of the Texas Constitution, as interpreted and enforced by the Courts of Texas and Appellees herein, void as being repugnant to Section 1 of the 14th Amendment to the Constitution of the United States of America, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States?

47. Does the aforesaid portion of the Texas Constitution, as interpreted and enforced by the Courts of Texas and the Appellees herein, under the guise of protecting public interests and an alleged exercise of police power, illegally and arbitrarily interfere with private business or impose un-

usual and unnecessary restrictions upon lawful occupations in violation of said Section 1 of the 14th Amendment to the Constitution of the United States of America.

48. Is the aforesaid portion of the Texas Constitution, as interpreted and enforced by the Courts of the State of Texas and the Appellees herein, unconstitutional in view of said Section 1 of the 14th Amendment to the Constitution of the United States of America because said portion of the Texas Constitution is an arbitrary, unreasonable abridgment of Appellants-citizens' rights and privileges and an invasion of their liberty to engage in lawful business, because of unreasonable requirements, onerous burdens impossible to perform, not fairly applicable, and prohibitive?

49. Is the Texas Naturopathic Law (Article 4590d) valid?

50. Are the acts and conduct of the Appellees acting under the color of said Texas Medical Practice Act and the aforesaid portion of the Constitution of the State of Texas in filing suits, prosecuting and threatening to file suits against Appellants to prevent Appellants from following their lawful profession, a violation of the Petitioners' Civil Rights as guaranteed to them by the Federal Statutes, and particularly Title 42, Section 1983, U.S.C.A. which provides for civil action for deprivation of rights, and which says that, "Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or

Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress"?

51. Are the Appellants entitled to a Temporary and Permanent Injunction against the Appellees because of the Appellees' illegal actions in obtaining and intending to obtain injunctions, fines and forfeitures against and imprisonment of Appellants herein, and because the Appellants are now and are threatened to continue to be greatly harmed, damaged, imprisoned and injured by the said illegal, wrongful, knowing and purposeful acts of the Appellees, and because Appellants have no plain, adequate or efficient remedy at law to redress the said wrongful, knowing and purposeful acts of the Appellees other than by injunction, and because any other remedies to which they could be remitted would be attended by uncertainties, would involve a multiplicity of suits and would cause the Appellants irreparable harm and injury and occasion undue hardship, vacation and delay, and because such temporary and permanent injunction should be issued because the Appellants will suffer immediate and irreparable injury, harm, damage, imprisonment, forfeitures, and fines?

52. Is medical freedom guaranteed by the Constitution of the United States of America and the State of Texas and their respective Amendments?

STATEMENT OF THE CASE

The Appellants are all Naturopathic physicians who have been practicing Naturopathy in the State of Texas. They all hold licenses under the Texas Naturopathic Board under the Texas Statute Article 4590d and are equipped to practice their recognized limited field of medicine. Shortly after the Texas Naturopathic law was declared unconstitutional by the Texas Supreme Court, the Appellees, Will Wilson, Attorney General of Texas, the Texas State Medical Board, and Henry Wade, District Attorney of Dallas County, Texas, began filing several injunction suits and criminal suits against the Appellants to enjoin them from practicing the limited art of healing known as Naturopathy and to fine and imprison them under the guise of contending that the Appellants were practicing general allopathic medicine in violation of the Texas State Medical Practice Act and had not secured an M.D. License. These suits were preventing the Appellants from practicing their occupations as Naturopaths, and they were being enjoined and were receiving fines and imprisonment and being harassed and damaged by such actions of the Appellees, and the Appellees further threatened to continue to harm, damage, imprison and injure the Petitioners by the illegal, wrongful, knowing and purposeful acts of the Appellees in obtaining injunctions, fines, forfeitures against and imprisonments of the Appellants, and the Appellants have no adequate, plain, or efficient remedy at law to redress such wrongful, knowing and purposeful acts of the Appellees other than by this suit for injunction because any other

remedies to which the Appellants would be remitted would be attended by uncertainties, would involve a multiplicity of suits and would cause the Appellants irreparable harm and injury and occasion undue harm and hardship, vexation and delay, and because the permanent injunctions prayed for should be issued because otherwise the Appellants will suffer immediate and future irreparable injury, harm, damage, imprisonment, forfeitures and fines.

Briefly the facts material to the consideration of the questions presented are as follows:

The parties have stipulated that the Appellees have filed suits against the Appellants to enforce the Texas Medical Practice Act, and that they will continue to do so. The testimony of Dr. Bratcher shows that the Appellees have been obtaining and intend to obtain injunctions, fines and forfeitures against and the imprisonment of the Appellants, and that the Appellants are now and are threatened to continue to be greatly harmed, damaged, imprisoned and injured by the illegal, wrongful, knowing and purposeful acts of the Appellees, and that the Appellants have no plain, adequate or efficient remedy at law to redress the said wrongful, knowing and purposeful acts of the Appellants other than by injunction, and that any other remedies to which Appellants would be remitted would be attended by uncertainties, would involve a multiplicity of suits and would cause the Appellants irreparable harm and injury and occasion undue hardship, vexation and delay, and that the permanent injunction prayed for by the Appellants should be issued because otherwise the Appellants will suffer immediate and irreparable

injury and harm, damage, imprisonment, forfeitures and fines.

The Appellees are taking the action which they have and the action which they threaten to take against the Appellants under and by virtue of the Texas Medical Practice Act, which is Articles 4495-4512, Texas Revised Civil Statutes (1925), as amended to date (the pertinent Articles as set forth in Appellants' Exhibit A in this case; and is the same as Appendix XIII hereto), and such Articles are found in Volume 12A (1960 edition), pages 524-559. This series of Statutes known as the Texas Medical Practice Act provides in Article 4510 that any person shall be regarded as practicing medicine within the meaning of the law who shall publicly profess to be a physician or surgeon and shall diagnose, treat or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof; or who shall diagnose, treat or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method, or to effect cures thereof and charge therefor, directly or indirectly, money or other compensation. This same Act, in Article 4511, says that the term "Physician" and "Surgeon" as used in this law, shall be construed as synonymous, and the terms "Practitioner" and "Practitioners of Medicine" and "Practice of Medicine" as used in this law shall be construed to refer to and include Physicians and Surgeons. This law in Article 4501 states that all applicants for license to practice medicine in this State, not otherwise licensed

under the provisions of law, must successfully pass an examination by the Texas Board of Medical Examiners. Article 4503 of this law states that examinations shall be conducted on anatomy, physiology, chemistry, histology, pathology, bacteriology, diagnosis, surgery, obstetrics, gynecology, hygiene and medical jurisprudence. The Act says in Article 4498 that it shall be unlawful for anyone to practice medicine in any of its branches upon human beings within the limits of this State who has not registered in the District Clerk's Office of every County in which he may reside, and in each and every County in which he may maintain an office or may designate a place for meeting, advising, treating in any manner, or prescribing for patients, the certificate evidencing his right to practice medicine, as issued to him by the Texas State Board of Medical Examiners.

The State of Texas also has what is known as the Basic Science Law, which is Article 4590c (Vernon's Annotated Civil Statutes, 1925, as amended to date) and is Appellants' Exhibit B in this case. This law prescribes that no person shall be permitted to take an examination or license to practice the healing art, or any branch thereof, or be granted any such license, unless he has presented to the Board of Officers empowered to issue such a license as the applicant seeks, a Certificate of proficiency in anatomy, physiology, chemistry, bacteriology, pathology, hygiene and public health, thereinafter referred to in such Act as the "Basic Sciences", issued by the State Board of Examiners in the Basic Sciences. The Act further prescribes a definition of the healing art by stating that "for the purpose of this act the healing art

includes any system, treatment, operation, diagnosis, prescription or practice for the ascertainment, cure, relief, palliation, adjustment or correction of any human disease, ailment, deformity, injury or unhealthy or abnormal physical or mental condition." The State of Texas by its Legislature passed a law known as the "Naturopathic Law", which is Article 4590d, which is Appellants' Exhibit C in this case. By this law there was established a Board for the examination of applicants who desired to practice Naturopathy and provisions were made for the issuance of a license to successful examinees to practice Naturopathy in the State of Texas. This law was declared unconstitutional by a Court in Texas. Subsequent to such Court action, the law was repealed.

Also of interest is that in Texas there is a Healing Art Identification Act, Article 4590e (Vernon's Annotated Revised Civil Statutes of the State of Texas, Revision of 1925, as Amended to date) (Appellants' Exhibit D herein), which provides as follows, to-wit:

"Title

"Section 1. This Act shall be known as the Healing Art Identification Act. The provisions of this Act shall not affect or limit in any way the application or use of the principles, tenets, or teachings of any established church in the ministration to the sick or suffering by prayer, without the use of any drug or material remedy, provided sanitary and quarantine laws and regulations are complied with; and provided, further, that all those so ministering or offering to minister to the sick or suffering by prayer shall refrain from maintaining offices, except for the purpose of exercising the principles, tenets, or teachings of the church of which they are bona fide members.

"The Healing Art Defined

"Section 2. For the purpose of this Act, the healing art includes any system, treatment, operation, diagnosis, prescription or practice for the ascertainment, cure, relief, palliation, adjustment or correction of any human disease, ailment, deformity, injury or unhealthy or abnormal physical or mental condition.

"Healing Art Identifications

"Section 3. Every person licensed to practice the healing art heretofore or hereafter by either the Texas State Board of Medical Examiners, the State Board of Dental Examiners, the Texas Board of Examiners in Optometry, the State Board of Chiropody Examiners and the State Board of Naturopathic Examiners shall in the professional use of his name on any sign, pamphlet, stationery, letterhead, signature, or on any other such means of professional identification, written or printed, designate in the manner set forth in this Act the system of the healing art which is by his license permitted to practice. The following are the legally required identifications, one of which must be used by practitioners of the healing art:

"(1) If licensed by the Texas State Board of Medical Examiners on the basis of the degree Doctor of Medicine: physician and or surgeon, M.D.; doctor, M.D.; doctor of medicine, M.D.

"(2) If licensed by the Texas State Board of Medical Examiners on the basis of the degree Doctor of Osteopathy: physician and or surgeon, D.O.; Osteopathic physician and or Surgeon; doctor, D.O.; doctor of osteopath; osteopath; D.O.

"(3) If licensed by the State Board of Dental Examiners: dentist; doctor, D.D.S.; doctor of dental surgery; D.D.S. doctor of dental medicine, D.M.D.

"(4) If licensed by the Texas Board of Chiropody Examiners: chiropractor; doctor, D.C.; doctor of Chiropractic; D.C.

"(5) If licensed by the Texas State Board of Examiners in Optometry: optometrist; doctor, optometrist; doctor of optometry; O.D.

"(6) If licensed by the State Board of Chiropody Examiners: chiropodist; doctor, D.S.C.; doctor of surgical chiropody; D.S.C.

"(7) If licensed by the State Board of Naturopathic Examiners: naturopathic physician; physician, N.D.; doctor of naturopathy; N.D.; doctor, N.D."

Therefore, this Honorable Supreme Court of the United States can easily see that there are various standards, qualifications and identities for the various fields of the healing art and its branches which are separate and apart from the basic, minimum, uniform standard requirements set forth in the Basic Science Law for all the practitioners of the healing art and branches thereof. In other words, different standards and qualifications are recognized and apply to different fields of the healing arts and its branches; that is, certain requirements apply to one field that would not apply to others, and vice-versa.

The Appellants are all naturopathic physicians and, as stated before, have practiced in the State of Texas and have held licenses to practice Naturopathy under the Texas State Board of Naturopathy. Most of them have discontinued practice after the Appellees began their course of enjoining and seeking fines and imprisonments against various Appellants, and the Appellees continued to do so; however, a few of the Appellants have dogmatically continued to practice in spite of the threats of the Appellees.

Without question, the Texas State Medical Practice Act is intended for the allopathic doctor or medical practitioner or surgeon. It even says so. The definition is given of medicine is that system of medicine employed by the allopathic school, of medicine, i.e., treat any disease or disorder or any physical deformity or injury by any system or method. This Act is for the allopathic doctor or the doctor who follows the allopathic school of medicine. The allopathic doctors who testified in this case, Dr. Crabb, who is Secretary of the Texas State Board of Medical Examiners; Dr. Ezell, one of the witnesses for the Appellees; Dr. Russell, who is an Osteopath, but a one time member of the Texas State Board of Medical Examiners; and Dr. L. H. Denman, President of the Texas State Board of Medical Examiners, all without question stated that the examination given by the Texas State Board of Medical Examiners was for the purpose of determining whether or not the candidate was proficient and sufficiently skilled to practice allopathic medicine or as a general medical practitioner and surgeon. None of them knew anything about Naturopathy, never practiced Naturopathy, and did not feel qualified to examine a person in Naturopathy to see if he were qualified to practice Naturopathy. Further, they were all unanimously agreed that Naturopathy was a limited field of the healing art.

The Appellees presented some twelve instructors and professors from the Southwestern Medical School of The University of Texas as witnesses regarding statements pertaining to the twelve subjects given on the examination by the Texas State Board of Medical Examiners; without ques-

tion and without exception, none of these professors knew anything about Naturopathy, never practiced Naturopathy, and never instructed in Naturopathy; and each of them admitted that they taught their courses and instructed the students to become allopathic doctors and to meet the minimum, non discriminating standards which is generally set for all general medical practitioners and surgeons and to equip themselves to pass the examination given by the Texas State Board of Medical Examiners.

There was offered in evidence by Dr. Crabb, the Secretary of the Texas State Board of Medical Examiners, the questions which were given on the last examination by the Texas State Board of Medical Examiners to applicants for a license by that Board; such questions covering the twelve subjects set forth in the Texas Medical Practice Act, and Dr. Bratcher in his testimony set forth minutely, distinctly and in detail why it is unreasonable to require a person who desires to practice Naturopathy to have to take these examinations which were given last June (1961) to examiners who desire to be licensed as general medical physicians and surgeons or allopathic doctors. Dr. Bratcher specifically pointed out that this examination which is given for the general medical practitioners and surgeons covered matters not practiced by Naturopaths; and on the subjects within the realm of Naturopathic practice, the questions were in much greater detail than the knowledge required of a Naturopath on such subject, and in particular that the questions on such examination are designed to determine the applicant's ability to practice allopathy and surgery; and he further testified that it

would be unreasonable to require an applicant for a license to practice Naturopathy to have to study for and pass this examination.

Each of the Appellants who testified set forth that he is a qualified naturopathic physician, that Naturopathy is defined as set forth in the Dictionary of Occupational Titles, U. S. Department of Labor, as follows:

> "DOCTOR, NATUROPATHIC (Medical Ser.) 0-52.21. Naturopath. A HEALER. Diagnoses and treats patients to stimulate and restore natural bodily processes and functions using a system of practice that employs physical, mechanical, chemical, and psychological methods: Utilizes dietetics, exercise, manipulation, chemical substances naturally found in or produced by living bodies, and healing properties of air, light, water, heat, and electricity. Provides for care of bodily functions, processes or traumas, and treats nervous or muscular tension; abnormalities of tissues, organs, muscles, joints, bones and skin; pressure on nerves, blood vessels, and lymphatics; and assists patients in making adjustments of a mental and emotional nature. Naturopathy excludes the use of major surgery, x-ray and radium for therapeutic purposes, and use of drugs with exception of those substances which are assimilable, contain elements or compounds which are components of bodily tissues, and are usable by body processes for maintenance of life."

The Appellants have had varying degrees of formal education in Naturopathic medicine and its limited field of medicine; however, regardless of the extent of their formal training, all of them are well qualified through experience and training as Naturopathic physicians in addition to their formal training.

Dr. Crabb who is Secretary to the State Board of Medical Examiners and who also examines on the subject of gynecology and Dr. L. H. Denman, President of the Texas State Board of Medical Examiners, who examines on Anatomy, were frank to admit that they knew very little about Naturopathy, that they had never studied Naturopathy, that they did not examine on Naturopathy, that the Board did not give a license to practice Naturopathy, and they all distinctly exhibited attitudes that there was no connection between a naturopath and a general medical practitioner and surgeon.

STATEMENT OF THE REASONS WHY THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION, WITH BRIEFS ON THE MERITS AND ORAL ARGUMENT, FOR THEIR RESOLUTION.

This is the most important case that this Court will ever hear and decide. This case will determine the future of the health of the American people. This case is the last hope of the practitioners of natural treatment to survive. If this Court now rules against them, those medical practitioners who advocate the use of drugs and surgery will have a weapon to destroy natural healers throughout the United States. Why is this important to this Court? It is important to this Court because the systems of natural treatment is a highly successful and relatively inexpensive method of maintaining the health of the American people. Although it is a narrow, limited scope of the healing arts, yet it is such that can be practiced for the maintenance of health in the vast

majority of cases in this country. Thus, it becomes the most important system of the healing arts. And in time it will be accepted by the American people as the most important method of treatment, because those doctors who follow and practice and champion the art of giving drugs to their patients are only adding more poisons or non-assimilable stuffs in sick bodies and this places additional burdens on already unhealthy patients because the patients will have to rid their bodies of these additional foreign substances in addition to the burden of getting well; and in the case of the surgeon, of course, this is an outright admission that a human organ cannot be cured by such doctor, and that he will simply have to mechanically repair or destroy such organ by removing it from the body. Thus, the great and true hope of a universally healthy American people lies with the Naturopathic or natural healers.

As a matter of background, the range, fields, ramifications, and branches of medicine are widespread and unlimited and there are many variances and unknowns in the medical world, yet there are some simplicities and some specifics. The dominant and paramount division seems to lie between the natural healers and those who utilize drugs and surgery.

The average person, and I am assuming that I can be referred to as one, and I am sure the Court, and even counsel for the Appellees have thought about a doctor of medicine as simply a doctor and felt like that he should know all and could cure all. Very little thought has probably been given by laymen as to what kind of studies a doctor makes before

he practices medicine and how he learns to determine if a person has a particular illness, and if he has an illness what kind of illness he has, and if he has an illness what does he do to cure it. Surprisingly, even the M.D.'s have a hard time finding out what's wrong with a person when they are sick. Dr. Denman, the President of the Texas Board of Medical Examiners, would not answer the question as to what percentage of diagnosis were correct. Of course, a common cold, or the mumps, or the chicken-pox, can be easily recognized, but even then there is not much treatment to be given—rest and plenty of liquids is about the best thing for a cold. If a person has the mumps, the doctor might give him some sulfa pills to keep down infection and tell the patient to go to bed and stay there for nine days, and practically all other things a person might have wrong with him the doctors admit they have a great deal of trouble trying to guess what it is. Many of them are surgical problems; and the doctors themselves admit that surgery also involves a lot of guess work, except sometimes an appendix or gall-stones, which is a very simple operation; and even in cases of appendicitis and gall-stones the surgeons admit themselves that there is a lot of confusion and uncertainty many times among themselves as to whether or not such conditions exist and whether an operation is needed. And too, many times the surgeon is looked upon by some medical men as merely a mechanic, a person whose job is to merely repair or remove organs or tissues of the human body. Albeit that he is an expert and a highly trained and valuable technician, yet he does not cure or treat a disease or illness in the sense that a Naturopath does. So, this Hon-

orable Court will probably take judicial knowledge of the fact that the practice of medicine is not an exclusive or exact science, and that there are different ideas about illness and the cures thereof.

There has developed through the years the use of toxic and synthetic drugs as a means of an effort to cure a person. This is a different theory of curing illness than has been followed by the Naturopaths. The Naturopaths cling to the old idea of the use of natural remedies and the use of light, heat, air, cold and water and nutritional theories of helpin a person to maintain health. The Naturopath does not treat the symptoms, but attempts to find the cause of whatever is causing the symptom and then treat the cause. The Naturopathic theory is that once the cause is cured the symptom will disappear. The modern allopathic doctor follows the theory that he wants to dissipate the symptom either by some type of drug or by surgical removal by knife.

The Naturopath does not profess nor use these synthetic, toxic drugs. The Naturopath feels that the synthetic, toxic drug actually does more harm than good to the body. The Naturopath feels and believes that the body itself contains natural inborn healing powers and can eventually cure itself with the assistance of the naturopathic doctor. The Naturopath believes, which is true, that the body is composed of certain chemicals. The naturopath believes that when a person is ill that there is an imbalance of these chemicals. The naturopath then determines by examination where the imbalance of chemicals lies and through proper diet

and nutrition and by the use of natural substances given to the patient restores the chemicals of the body to proper balance, and when this is done the body will be cured. The naturopath believes that if a person is ill that, in some instances, some foreign substances or bodies have appeared in the body which is abnormal, and the naturopath believes that by proper diet, manipulation and use of air, light, heat and water, he can help the patient to cast off from the body the foreign substance which is causing the illness through excretion, perspiration, urination, lungs and similar means. The naturopath believes that by putting synthetic, toxic drugs into the person's system there is thereby caused harmful effects and much distress to the system, and sometimes causes even worse sickness or illness in the human body than before the synthetic drugs were taken.

One of the Counsel for the Appellees has referred to the Appellants several times as "Quacks". I would like to mention to the Court the history of quackery. The first uses of drugs were in Germany. Some of the doctors there started the use of quick-silver in treatments. The German word for quick-silver is "Quackensalver". And when a patient came along and said he wanted to be treated with such substance, the doctor who did not use it told the patient to go up and see the "Quack". Thus, actually the word "quack" applies to the drug doctors, and not to the naturopaths.

Dr. Denham testified that if a medical doctor should decide to practice Naturopathy that he would have no objec-

tion to it, and that the Texas State Board of Medical Examiners would not do anything about it. So, apparently Dr. Denman does not feel that Naturopathy is unsafe or bad for the public; otherwise, he would try to stop the doctor who started practicing as a naturopath.

The old homeopaths started using drugs to a certain extent, with the belief that by using drugs they could set up enough illness in the body that would fight off and resist the illness which a person had in their body. The eclectics took the attitude that they the right to elect which system they wanted to use. The present day allopath professes to use any system; however, the allopath actually fosters drug therapy and surgery. Dr. Denman himself testified he used lots of mercury and cold tar in his treatment of patients. Most allopaths have adopted a system of a stereotyped type of treatment.

In their books they have a certain description of the type of disease of illness which is followed with the type of drug to give. Many of these books are furnished by the drug and pharmaceutical houses. Actually there has developed among the allopaths an attempt to fit the illness to the treatment or to the drug to be used. If certain drugs fail, they try others; but in the mind of the naturopath this is a very unsuccessful way to treat a patient. Fundamentally here is another predominant line of demarcation between the naturopath and allopath. The allopath attempts to treat the disease; that is, he attempts to diagnose what kind of disease a patient has and then attempts to cure this disease

either by drugs or by surgery. On the other hand, the naturopath treats the patient rather than the disease. The naturopath looks upon illness or discomfort of a patient as a result of some distortion, disrelationship, or deficiency in the patient's body, which has been caused by something unnatural or foreign to the body; and the naturopath seeks to remedy such distortion, disrelationship, or deficiency, and thereby any illness or discomfort is eliminated. The naturopath does not attempt to do everything. It is a very basic, limited field of the healing art. It uses the simplicities and tries to make everything simple. It is an inexpensive practice of a limited healing art. They do not attempt to take care of serious illnesses requiring a medical doctor, quarantinable and infectious diseases, emergencies, nor cases requiring surgery. They treat simple illnesses and use simple methods. I am submitting herewith to the Court a book called "Basic Naturopathy", which is published by the American Naturopathic Association, Inc. This is Appellants' Exhibit F. If the Court will peruse this book, I am sure that the Court will realize the simplicity of the Naturopathic practice.

At the same time, do not let me underestimate the value of the Naturopathic system. William Osler, Honorary Professor of medicine of Johns Hopkins University, in his book called "Aequanimitas" published in 1942 by the Blakiston Company, Philadelphia, in the Third Edition, states that "One of the most striking characteristics of the modern treatment of disease is the return to what used to be called the natural methods—diet, exercise, bathing and massage."

He also says "Massage and hydrotherapy have taken their places as most important measures of relief in chronic conditions, and the latter has been most universally adopted as the only safe means of combatting the high temperatures of the acute fevers." These statements are made on Pages 256 and 257 respectively of the foregoing work, and this work is in evidence as Appellants' Exhibit D. And in 1944, I ask the Court to witness the words of Dr. Ray Lyman Wilburn, M.D., when he was Chairman of the Council on Medical Education in Hospitals before the 40th Annual Congress on Medical Education and Licensure held in Chicago on February 14, 1944, when he stated:

"New treatments make use of heat, cold, water, electricity, and specific manipulations. * * * They bring biological responses more protent than many of the drugs gathered through centuries by trial and error. * * * Medicine based on pills and potions is becoming obsolete. * * * The physiology, with help of physics, has taught us many ways to deal with the human body that were dreamed of only a decade ago by us, but comparatively successful pursued by those of the irregular schools. * * * The medical profession will profit by recognizing this new concept, and must insist that its schools promptly mold their instruction to conform with the new knowledge of body mechanics. * * *" The Journal of The American Medical Association, March 25, 1944, Vol. 124, pp. 815 and 816 is in evidence as Appellants' Exhibit P-6.

Even Hippocrates (460-377 B. C.) known as the father of modern medicine, was a Naturopath, and the most cele-

brated physician of antiquity. He formulated the Hippocratic Oath, which is the oath used by physicians and surgeons today, and in his writings Hippocrates stressed the effort of the body to heal itself: "The symptoms of disease are partly symptoms of defense and partly symptoms of failure." In his book on "Epidemic Diseases", Hippocrates says: "Nature is the healer of all diseases," and "Let foods be your medicine and your medicine your foods." See *Basic Naturopathy*, Supra, pages 7 and 8. There is also a distinct difference between the method of practice followed by the practitioners of medicine who use drugs as compared to the advantages of the naturopathic system of practice which is reported in the book called "The Drug Story" by Morris A. Bealle, printed in 1949 and published by the Columbia Publishing Company, P. O. Box 1623, Washington, D. C. The same is herewith submitted to the Court for its perusal. This is Appellants' Exhibit G.

The Appellants submit to the Court that the right to follow and practice a profession is a property right, and is one of the fundamental rights of citizenship. A person's business, profession or occupation is properly within the meaning and intent of the constitutional provision requiring due process of law, and is included within the right to liberty and the pursuit of happiness guarantees. *Adams v. Tanner, 244 U. S. 590; 61 L. Ed. 1336, 37 S. Ct. 662, 665.* And the Court should also consider that the rights and freedoms of citizens of the United States to have their human ills treated

by naturopathic therapies and practitioners is especially precious—in fact, absolutely essential to the well-being of those patients who cannot use drugs or medicine. This is a matter of grave and important national concern. As a matter of fact, in many States in the United States the Legislature, or governing authority, has passed proper laws regulating the practice of Naturopathy, much as the State of Texas has done in the past.

The right to practice medicine or the limited healing art of naturopathy is like the right to practice law or carry on a trade. As Mr. Douglas of the Supreme Court of the United States emphasized in *Barsky v. Board of Regents of the University of New York, 347 U. S. 442, 98 L. Ed. 829; 74 S. Ct. 650*, this right is a priceless part of the liberty of an individual. It may mean more than property. Such a right is protected by our Federal Constitution from arbitrary infringement, which forbids any State to deprive a person of liberty or property without due process of law. The right to work is the most valuable liberty that a man possesses. Man has, indeed, as much right to work as he has to live, to be free, or to own property.

Constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of their vitality and efficacy, and leads to a gradual depreciation and deterioration of such rights. It is the duty of the Courts to be watchful for the constitutional rights of the citizens and protect such rights against any stealthy encroachments thereon. *Gulf,*

Colorado and Santa Fe Railway Co. v. W. H. Ellis, 165 U. S. 150; 41 L. Ed. 666, 17 S. Ct. 255, 256:

At common law, the practice of medicine was open to all who desired to follow it in any of its branches, subject only to liability for damages in the case of lack of skill on the part of the practitioner, and to the right of the government to proceed by quo warranto to prevent incompetents from following the business. *State v. Borah, 51 Arizona 318; 76 P. 2d 757; 115 A.L.R. 254.* And, as a general proposition, the right to follow the profession of medicine and surgery as a lawful occupation is one of the fundamental rights to citizenship. *People v. Love, 298 Ill. 304, 131 N. E. 809; 16 A.L.R. 703; State v. District Court, 26 Mont. 121; 66 P. 754, 755.* This a valuable property right, in which, under the Constitution and laws of the State, one is entitled to be protected and secured. *Hewitt v. State Medical Examiners, 148 Cal. 590; 84 P. 39; 3 L. R. A. (N.S.) 896, 113 Am. Cas. 750, Chenoweth v. State Medical Examiners, 57 Colo. 74, 141 P. 132; 51 L.R.A. (N.S.) 958, Ann. Cass 1915 D1188; People v. Love,* supra. It is beyond the power of a State to prohibit the practice of medicine and surgery, or any of the limited systems thereof, in the absence of any showing of injury or tendency of injury to the public health, safety or morals. *State v. Armstrong, 38 Idaho 493, 255 P. 491, 33 A.L.R. 835; State v. Biggs, 113 N.C. 729; 46 S.E. 401, 64 L.R.A. 139, 98 Am. St. Rep. 731.*

Likewise, the Legislature cannot, under the present state of general medical knowledge, restrict all healing to any one school of thought or practice. *State v. Biggs,* supra.

And, likewise, in the State of Texas, no preference should be given to any school of medicine. *Constitution of the State of Texas, 1876*, Article 16, Section 31. However, the State may, under its police powers, prescribe reasonable controls on the general practice of medicine and surgery as affecting the health and welfare of the people, and, similarly, the State may *regulate, within reasonable bounds*, a recognized useful, *limited* system of the healing art. But *it cannot prescribe such arbitrary and unreasonable requirements which would contravene the Constitution and laws of the United States and amount to a denial of due process or equal protection of the laws under the Fourteenth Amendment.* See *England, et al. v. La. State Board of Medical Examiners, et al. (Fifth Circuit-Orig. Opinion, Sept. 9, 1958), 259 Fed. 2d 626 (Pet. for Rehearing den., Jan. 23, 1959), 263 F. 2d 661, (Pet. for Writ of Certiorari denied, June 1, 1959), 359 U. S. 1012, 3 L. Ed. 2nd 1036, 79 S. Ct. 1149.*

The opinions of the majority of the Court in this latter case, which has just been cited, are masterpieces. The illuminating, sagacious and fundamental statements contained in these opinions marks the first time that a Court has undertaken to fully understand and develop true meaning and need for medical freedom. These opinions herald a return of medical freedom and a wresting of the healing art from a monopolistic grip thereon that the allopaths have stealthily gained. The allopaths have so dominated and controlled the healing are that the modern generation knows of practically no medical treatment other than by drugs or surgery. Sight has nearly been lost by today's generation of highly successful cures of illness by the restoration of the human

body to natural health by treatment by natural means as practiced by the naturopaths. The foregoing opinion is hereby adopted and made a part of this brief as though fully copied herein. The right to follow the profession of medicine and surgery is one of the fundamental rights of citizenship. *People v. Love*, supra, 811. A person's business, profession or occupation is at the same time "property" within the meaning of its constitutional provision as to due process of law, and it is also included in the right to liberty and the pursuit of happiness. *Butchers Union Slaughter House v. Crescent City Stock Landing Co., 111. U. S. 76, 4 S. Ct. 652, 28 L. Ed. 585; People v. Love*, supra, *p. 811.*

We must therefore, in this consideration treat Naturopathy as a useful and lawful business, science or profession, and not as one dangerous or unlawful in its exercise, and subject to abatement or destruction by unreasonable and arbitrary requirements, but as a profession or business that may be regulated by provisions prescribing reasonable requirements of those who apply to practice their profession, without unlawful or unjust discrimination. See *People v. Love*, supra, *P. 811.*

It is a matter of common knowledge that the Allopaths, sometimes referred to as the "Knife and Drug" doctors, have been attempting to extinguish the other schools and philosophies of medicine. *People v. Love;* supra. The allopaths have practically absorbed the Eclectics and Homeopaths and are now maintaining a constant war to ostracize the Osteopaths. The Naturopaths have fallen victims to the

Allopaths in many places; however, Naturopaths are still permitted as related above to practice in several States and in the District of Columbia. The Naturopaths, whose philosophy is to treat the cause of illness by natural methods to put the human body back in balance and thus eliminate the illness is an age-old philosophy of medicine which should be preserved. I believe that it is the duty of this Court to prevent the destruction and annihilation by the Texas Medical Practice Act of one of the best systems of the healing arts. If the system of natural healing is destroyed and this country is forced to rely on the hit and miss hope of synthetic and toxic drug cure and the removal of imbalanced organs by the knife, I would say the future of medicine in this country is narrow and short lived. The Naturopath rather than treating the symptoms or effects of disease, seek out the cause of a patient's disease or discomfort, and through natural methods assist nature in its effort to remove the cause of disease or disrelationship in the human body and restores such human body back to its normal health condition. This Naturopathic school of medicine is a limited field of medicine and does not include the use of toxic drugs, major surgery, and x-ray and radium equipment for therapeutic purposes, but it does include those theories and practices of treatment by natural means which have been developed to a high degree of therapeutic efficiency by the Naturopaths persistently maintaining the efficacy of their own philosophy. As stated previously, the Naturopathic system of healing is a limited system. Its adherents utilize air, light, water, manipulation and electricity, and other means as set forth in the hereinbefore

mentioned occupational definition, in the treating and in the handling and care of abnormalities—it is the minor scope of attention to distortion, disrelationship, and deficiencies, a narrow and limited specialty rather than the all-inclusive comprehensive practice of diagnosing and treating all diseases by any and all means including the use of drugs, x-ray, radium, and major surgery as done by the major allopathic school in the practice of medicine as an art.

Naturopathic physicians do not practice, advocate or champion the unlimited practice art as to all phases and aspects of disease, and Naturopathic physicians are circumscribed and defined as set forth above. They administer the organic products of nature as healing agents, the fundamental concept being largely nutritional, i.e., to build, to balance and normalize the human body. Accordingly, the Naturopathic practitioners place considerable emphasis upon the science of nutrition and the use of natural foods in their natural states. It cannot be said that such a system as this is of itself inimical to the health and welfare of the people, or is it a nuisance per se. *Missouri Veterinary Medical Assn. v. Glasau, Mo. App., 230 S.W. 2d 169; People, ex rel v. Universal Chiropractic Assn., et al., 302 Ill. 228; 144 N.E. 4; Dean v. State, 151 Ga. 471; 106 S. E. 792.*

From time to time the Courts in the United States have considered the problem of whether a naturopathic physician should be required to have a regular medical doctor's license to practice naturopathy. It appears that the key to the answer to this problem is that the school of naturopathy

is a limited school of medicine, and as such this limited system of healing practice should be distinguished from the general system relating to the practice of medicine and surgery; and the qualifications to practice naturopathy cannot be measured by the standards required of allopathic physicians and surgeons. *People v. Love, 68. Ct. Ill., June 22, 1921), 298 Ill. 308, 131 N. E. 809; State v. Biggs, 133 N. C. 729; 46 S. E. 401, 71 Am. Dec. 145, State v. Armstrong, 38 Idaho 194, 223 P. 491; Stribling v. Jolly (S. Ct. of Mo. en banc, Jan. 14, 1931), 245 S. W. 2d 883, 362 Mo. 995; Stribling v. Jolley, 254 S. W. 2d 519 (Mo. App.); Healing Arts Practice Acts D. C. 1928, 45 Stat. 1326, 1931 Code D. C., T. 2; State of Idaho, ex rel State Board of Medicine of the State of Idaho, S. M. Poindexter, Chairman, Plaintiff-Appellant v. David Smith, Defendant-Respondent (S. Ct. Idaho, April 8, 1959), 337 Pac. 2d 918-922.*

It is not only granted but suggested and desired that the practice of Naturopathy be controlled by State law, such as the Naturopathic Act which was passed by the Texas Legislature and which was sponsored by the Petitioners; but to require the practioners of this limited system of the healing art to qualify for and obtain a regular medical license required of allopathic physicians and surgeons is a deprivation of their rights, privileges and immunities to pursue their lawful occupation, which rights, privileges and immunities are guaranteed the naturopaths under the Constitution and laws of the United States. *State of Idaho, ex rel State Board of Medicine of the State of Idaho, S. M. Poindexter, Chairman, Plaintiff-Appellant v. David Smith,*

Defendant-Respondent (Supreme Court of Idaho, April 8, 1959), 337 Pac. 2d 938-942. This latter case is so directly in point that the body of the opinion therein is Appended hereto as Appendix XV. The requirement of the Texas State Medical Practice Act, which in effect would require the Naturopaths to have an M.D. license before they can practice their useful profession of Naturopathy is so arbitrary and unreasonable as to amount to a denial of due process, equal protection of the laws and a deprivation of their rights, privileges and immunities to pursue their lawful occupation as guaranteed them under the Fourteenth Amendment and other constitutional provisions. See *England, et al. v. Louisiana State Board of Medical Examiners, et al., 259 F. 2d 626, 627.* Appellants urge that the State cannot deny to their as naturopathic practitioners their right to engage in the practice of a useful profession. See *England, et al., v. Louisiana State Board of Medical Examiners, et al.; 259 F. 2d 626, 627.* Appellants do not deny but actually urge that the State may regulate, within reasonable bounds, the practice of Naturopathy; at the same time, Appellants contend that no Court, State or Federal, has held that a State Legislature has unlimited power or authority even with respect to such subjects as the health and welfare of the people of the State, to make such arbitrary and unreasonable requirements before a person can follow their profession that such unreasonable requirements would amount to an actual denial of their right to follow such profession. The Appellants admit that the primary responsibility rests with the State Legislature on these subjects, but the same

time the Court, including this Honorable Supreme Court of the limited States, has a solemn and inescapable duty, in an appropriate case, such as this one, of deciding whether State action is so arbitrary and unreasonable as to be unconstitutional, because a State under its police power may not substantially outlaw an apparently useful and beneficial profession such as Naturopathy without a showing or proof of a reasonable or rational basis for doing so. See *England, et al. v. Louisiana State Board of Medical Examiners, et al., 263 F. 2d 661, 663; Dent v. State of West Virginia, 1889, 129 U. S. 114, 121, 122, 9 Sup. Ct. 231, 233, 32 Law Ed. 623; Douglas v. Noble, 1923, 261 U. S. 165, 168, 43 Sup. Ct. 303, 305; Graves v. State of Minnesota, 1926, 272 U. S. 425, 428, 47 Sup. Ct. 122, 123.*

This right to follow a recognized occupation is a right protected by the constitional guaranties of liberty as set forth in the Fourteenth Amendment to the Federal Constitution, *State of Idaho, ex rel. State Board of Medicine of the State of Idaho, S. M. Poindexter, Chairman, Plaintiff-Appellant v. David Smith, Defendant-Respondent, supra; Berry v. Summers, 76 Idaho 446, 283 Pac. 2d 1094.*

A calling may not be prohibited, unless it is inherently injurious to the public health, safety or morals, or unless it has a tendency in that direction. *State v. Armstrong, supra.* In this case, the Appellants do not in anywise hold themselves out in the capacity of a medical physician or surgeon; they hold themselves out as practitioners of the recognized limited branch of the healing art designated Naturopathy. If a Naturopath is limited in his practice to the use

of a system of physical culture and drugless treatment by methods supposed to stimulate or assist nature, or the use of physical forces such as air, light, water, heat, massage and other similar simple materia medica, the system cannot be inherently injurious or have a tendency in that direction. Nothing in this case is indicated which would justify prohibiting Naturopathy. As a matter of fact the President of the State Board of Medical Examiners says he would have no objection to a doctor practicing Naturopathy. Further, there is no intention on the part of the Texas Legislature to prohibit Naturopathy; as a matter of fact, the Texas Legislature has previously passed a Special Law specifically authorizing the practice of Naturopathy. Naturopathy does bear some relation to the public health, and there can be no question but that the Legislature does have power to regulate all callings related to the public health. The contention here is that Naturopathy is being regulated by the Texas Medical Practice Act, which in effect requires that a Naturopath obtain the license provided by law for a medical physician and surgeon. To require one designed to engage in the practice of Naturopathy to meet the requirements prescribed for medical physicians and surgeons is an unreasonable regulation of a recognized calling, unnecessary to the public's protection. It would in most, if not all, instances amount to a prohibition. Therefore, insofar as the Texas Medical Practice Act affects the practice of Naturopathy, the Act is unconstitutional and void. So far as it affects the general unlimited practice of medicine and surgery or allopathy it is valid. (See *State of Idaho ex rel.*

State Board of Medicine of the State of Idaho, S. M. Poindexter, chairman, Plaintiff-Appellant v. David Smith, Defendant-Respondent, supra, Appendix XV.

Further, Appellants assert that they should not be compelled to obtain an allopathic "M.D." license as provided for by the Texas Medical Practice Act, before they can practice their limited recognized specialty field in the healing art known as Naturopathy, because such requirements in said act whereby the Appellants, as practitioners of the limited recognized specialty field of Naturopathy, are required to take and pass the examination given for the general allopathic medical practitioner and surgeon and obtain an "M.D." license before the Appellants can practice as Naturopathic physicians, are unconstitional and invalid as to the Appellants within the purview of the *Preamble, Sec. 2 of Art. IV, and Art. VI of the Constitution of the United States, and Sec. 1 of the 14th Amendment thereto*, the anti-trust laws and laws against monopolies and combinations in restraint of trade as prescribed in *Title 15, USCA, Sections 1, 2, 4, 7, 9, 13, 14, 15, 21, 26 and 44* because such requirements are:

1. That the examination which must be taken is on many subjects not practiced by the Naturopath and in some instances on subjects abhorred by and contrary to the tenets and teachings of the Naturopathic School of Medicine; and in particular, the Naturopath excludes from his practice the use of major surgery, x-ray and radium for therepeutic purposes, and the use of toxic drugs, and the allopathic examination covers not only these major factors used in the allopathic system of treatment but also the examination is given in such

more detail on all of these subjects and in particular to determine if a person is qualified to practice major surgery;

2. That the examination which must be taken and passed is given by a Board of Medical Examiners which follows the allopathic school of medicine and is not prepared, equipped, nor learned in the Naturopathic School of Medicine, and which Board is not authorized to issue a license to practice Naturopathy;

3. An arbitrary interference with the private occupation of Naturopathy under the guise of protecting public interest;

4. An imposition of unusual and unnecessary restrictions upon the lawful occupation of Naturopathy;

5. An arbitrary, unreasonable abridgement of Appellants' citizenship rights and privileges and an invasion of their liberty to engage in the lawful occupation of Naturopathy in that said requirements are unreasonable, onerous burdens impossible to perform, not fairly applicable and prohibitive because such requirements are unreasonable to determine if a person is qualified to practice the limited specialty of the healing art known as Naturopathy;

6. Such that have an unreasonable relation to the standards necessary to qualify a person to practice the limited specialty of the healing art known as Naturopathy;

7. So unreasonable as to interfere with the property and personal rights of Naturopaths, unnecessarily and arbitrarily;

8. An unreasonable attempt to exercise the authority vested in the Legislature in the public interest to establish rules and regulations for the practice of the limited specialty in the healing art known as Naturopathy;

9. Such that have no reasonable relation to the objective of establishing rules and regulations for the practice

of the limited specialty of the healing art known as Naturopathy; and,

10. Are creative of a monopoly and formative of a restraint of trade in that such requirements provide for and foster only the allopathic school of medicine.

The Appellants further state that the Texas Medical Practice Act, as interpreted and enforced by the Courts of Texas and the Appellees herein, is void and unenforceable as class legislation, because it violates the "Civil Rights Act" of the United States (Title 42, USCA, Sec. 1983) in each and all of the following respects:

1. By unreasonably requiring Naturopaths to pass examinations giv for general medical physicians and surgeons or allopaths in order to qualify to practice Naturopathy.

2. By prohibiting the practice of Naturopathy without showing it to be detrimental to the public or inherently harmful.

3. By unfairly discriminating against Naturopaths in the conferring of exclusive jurisdiction and control over these non-allopathic medical practitioners on their allopathic medical competitors.

4. By creating a monopoly by giving allopaths ascendency and control over the limited school of Naturopathy and the power to prevent Naturopathic physicians from practicing in violation of the Federal statutes pertaining to monopolies in restraint of trade (Title 15, USCA, Sections 4, 2, 4, 7, 9, 13, 14, 15, 21, 26 and 44.)

5. By restricting the rights of the citizens who have faith in and desire treatment by methods not based on the philosophy of that organization (allopathic school) practicing under the Texas Medical Practice Act.

Appellants further state that their fundamental rights guaranteed to them by the Constitution of the United States of America have been violated and are threatened to be violated, because the Texas Medical Practice Act, as interpreted and enforced by the Texas Courts and the Appellees, and the acts and conduct of the Appellees in prosecuting and threatening to prosecute suits against Appellees under color of such Act, to enjoin Appellants from practicing their profession of the specialty of Naturopathy, under the guise of prohibiting them from practicing the unlimited and all-inclusive practice of medicine and surgery or allopathy, abridge the Appellants' privileges and immunities and deprive them of their property without due process of law and deny them the full protection of the laws, in violation of Art. IV, Sec. 2 and Art. VI of the Constitution of the United States and Sec. 1 of the Fourteenth Amendment thereto, and that the Appellants are entitled to the injunction which they seek as provided under the Civil Rights Acts, Title 42, USCA, Sections 1983-1985.

As set forth before, Naturopathy is a recognized limited healing art whereby the practitioner thereof diagnoses and treats patients to stimulate and restore natural bodily processes and functions, using a system of practice that employs physical, mechanical, chemical, and psychological methods and who utilizes dietetics, exercise, manipulation, chemical substances naturally found in or produced by living bodies, and healing properties of light, water, heat, and electricity, and who provides for the care of bodily functions, processes or traumas, and treats nervous or muscular

tensions, abnormalities of tissues, organs, muscles, joints, bones and skin, pressure on nerves, blood vessels, and lymphatics, and who assists patients in making adjustments of a mental and emotional nature, and which limited healing art excludes the use of major surgery, x-ray, and radium for therepeutic purposes, and use of drugs with the exception of those substances which are assimilable, contain elements or compounds which are components of bodily tissues, and are usable by body process for maintenance of life, as contradistinguished from the allopathic (all-inclusive) practice of medicine such as defined in the Texas Medical Practice Act. Without exception the witnesses testified that the definition of medicine as given in the Texas Medical Practice Act, Article 4510, is the definition of Allopathic Medicine. And it also is important to note that Article 4511 of the Texas Medical Practice Act says that the terms, "physician", and "surgeon" as used in said act are synonymous. So, without question the act is designed for an allopathic physician and surgeon.

It is of importance to note that Art. 16, Sec. 31 of the Constitution of the State of Texas, provides: "The Legislature may pass laws prescribing the qualifications of practitioners of medicine in this State, and to punish person for mal-practice, but no preference shall ever be given by law to any schools of medicine." If this section of the Constitution of the State of Texas be construed to mean that a Naturopath has to take the same examination as an Allopath before a Naturopath can practice the limited field of the healing art known as Naturopathy, then the aforesaid provision of

the Constitution of the State of Texas is unconstitutional as being repugnant to the Constitution of the United States and amendments thereto, because it is unreasonable to require a Naturopathic physician to take the same examinations as the Allopathic physician and surgeon to obtain a certificate to practice the allopathic field of medicine before the Naturopath can practice his limited art of healing, because the allopathic field of medicine is entirely separate and distinct from the Naturopathic school of medicine, and the Naturopathic field of medicine is a limited and special branch of the healing art, and many of the allopathic practices are repugnant to and abhorred by the Naturopathic school of medicine, and the allopathic school of medicine relies heavily on synthetic and toxic drugs, major surgery, and the use of x-ray and radium equipment for therepeutic purposes, and such practice and subjects are not included in nor embraced by the Naturopathic school of medicine, and to require the Naturopath to fall in with this school of medicine is actually prohibitive and means that the Naturopaths cannot practice their profession whose theories, philosophies and practices have been developed to a high degree of therepeutic efficiency by the Naturopath-Appellants persistently maintaining the efficacy of their own philosophy; and to hold that the Naturopath cannot be examined in his own philosophy of his school of medicine but must turn his back on his theories, philosophies and school of medicine and study and be examined on the theories, philosophies and school of medicine of the allopathic school of physicians and surgeons, is an unreasonable requirement and is unconstitutional in its operative effect because it violates Sec. 1 of the Fourteenth Amendment to the Consti-

tution of the United States of America which says. "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." (This will include constitutional provisions.)

The Naturopathic profession, whose fundamental concept is largely nutritional, i.e. to build, balance, and normalize the human body and whose practitioners place considerable emphasis upon the science of nutrition and the use of natural foods in their natural states is a profession which is not of itself inimical to the health and welfare of the people, and these practitioners are not nuisances per se. Naturopathy is a lawful profession; and the right to practice such profession is a property right and one of the fundamental rights of citizenship; and such right to follow and practice the Naturopathic profession, business or occupation, is protected by the Constitution of the United States within the meaning and intent of the provisions of Sec. 1 of the Fourteenth Amendment to the Constitution of the United States of America, which says: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law," and such right is also included within the constitutional guaranty set forth in the Preamble to the Constitution which guarantees to the citizens of the United States of

America the right of liberty and the pursuit of happiness. These are fundamental rights which must be protected.

Actually, under the law of the State of Texas, the Texas Board of Medical Examiners is not authorized to issue licenses to Petitioners to practice the limited field of Naturopathy. The Appellants call the Court's attention to Art. 4590e of the Texas Revised Civil Statutes, which is referred to as the "Healing Art Identification Act", which Act is set forth in toto on pages 28, 29 and 30 hereinbefore in this Jurisdictional Statement, which act makes provisions as to how a person licensed to practice the healing art in this State shall identify himself. Sec. 3 of the aforesaid Healing Art Identification Act provides that every person licensed to practice the healing art heretofore or hereafter by either the Texas State Board of Medical Examiners, the State Board of Dental Examiners, the Texas Board of Chiropractic Examiners, the Texas State Board of Examiners in Optometry, the Texas Board of Chiropody Examiners, and the Texas State Board of Naturopathic Examiners, shall, in the professional use of his name on any sign, pamphlet, stationery, letterhead, signature, or on any other such means of professional identification, written or printed, designate in the manner set forth in this Act the system of healing art which he is by his license permitted to practice. It goes on to say that the following are the legally required identifications, one of which must be used by practitioners of a healing art:

(1) *If licensed by the Texas State Board of Medical Examiners on the basis of the degree of Doctor of*

Medicine: physician and or surgeon, M.D.; Doctor, M.D. Doctor of Medicine, M.D.

(2) *If licensed by the Texas State Board of Medical Examiners on the basis of the degree of Doctor of Osteopathic: physician and or surgeon D.O.; Osteopathic physician and or surgeon; Doctor D.O.; Doctor of Osteopathy; Osteopath D.O.*

(3) • • • •

(4) • • • •

(5) • • • •

(6) • • • •

(7) *If licensed by the State Board of Naturopathic Examiners: Naturopathic physician; physician, N.D. Doctor of Naturopathy N.D. Doctor, N.D.*

Thus, it can be plainly seen, that the Texas State Board of Medical Examiners licenses those who are to practice as an M.D. or D.O. This means a medical physician or surgeon or an osteopathic physician or surgeon. It plainly provides that the Naturopathic physician or doctor is to be licensed by the Texas State Board of Naturopathic Examiners and they are the only ones who can give a person the identification of N.D.

Another point which Appellants desire to make is this. The Appellees keep contending that the Texas Medical Practice Act provides that anyone who want to practice medicine shall be examined on the subjects of anatomy, physiology, chemistry, histology, pathology, bacteriology, diagnosis, surgery, obstetrics, gynecology, hygiene, and medical jurisprudence; and that if the Appellants want to practice Naturopathy, why don't they just take this examination and get an M.D.

license and go ahead and practice Naturopathy. This is absurd. The examination given by the Texas State Board of Medical Examiners is for those who are going to practice the general practice of medicine and surgery or allopathy, as all the evidence shows. We have in Texas a law which prescribes the basic uniform minimum standards which a person should attain in the way of these basic sciences before he practices in any field of the healing art. This is the basic science law which Appellants have mentioned before in this Jurisdictional Statement. Article 4590c, Vernon's Annotated Revised Civil Statutes of Texas, 1925, as amended to date. This examination is given on anatomy, physiology, chemistry, bacteriology, pathology, hygiene and public health and is to determine the proficiency of a person in the basis sciences before he can apply to take an examination to practice any of the healing arts. As a matter of fact, the law itself, in Sec. I of Article 4590c "Basic Science Law" prescribes that no person shall be permitted to take an examination for a license to practice the healing art or any branch thereof, or be granted any such license, unless he has presented to the Board or officer empowered to issue such a license as the applicant seeks a certificates of proficiency in these basic subjects issued by the State Board of Examiners in the Basic Sciences. It is obvious on the face of the laws that the examinations given on these subjects by the Texas Board of Medical Examiners is to determine if a man is qualified to practice as a general medical practitioner and surgeon, because the standard of knowledge in the basic sciences required of anyone practicing any of the healing

arts is determined by the Basic Science Board. And it is equally obvious on its face that the examination is, as the law states, the proficiency needed by anyone in these basic science subjects which one is required to have before they can take any examination to practice the healing art or any branch thereof, and likewise, the examination on these subjects given by the Texas State Board of Medical Examiners is in much greater detail and much more extensive and is designated to determine if the applicant is sufficiently learned and skilled to practice as a general medical physician and surgeon or allopath. At the time of the institution of this suit in 1959, the State of Texas had certain statutes pertaining to the healing art and various branches thereof. By Article number (Vernon's Annotated Revised Civil Statutes of the State of Texas, Revision of 1925, as amended to date), these various statutes are as follows:

Medicine	Articles 4495-4512
Chiropractors	Articles 4521b
Nurses	Articles 4513-4528b
Licensed Vocational Nurse	Article 4528c
Pharmacy	Articles 4542a & b
Dentistry	Articles 4543-4551d
Dental Hygienists	Article 4551e
Optometry	Articles 4552-4566-1
Chiropody	Articles 4567-4575
Naturopathy	Article 4590d (repealed in 1961 after declared void by Texas Courts)

The aforesaid Articles of the Texas Statutes prescribe the qualifications for applicants for each of the branches of the healing arts and set up the examining boards for such separate branches of the healing arts.

It would appear to Appellants that the Texas Legislature has already determined that there should be an examination given in the basic sciences by the Basic Science Board to determine the applicant's proficiency in anatomy, physiology, chemistry, bacteriology, pathology, and hygiene and public health. The Legislature has also shown that the healing art and its various branches requires further standards of proficiency in the particular field or branch of the healing art which a person desires to practice; and it prescribed that certain examinations be given to those applicants who desire to practice the healing art and its various branches by setting up boards to examine those persons in greater detail and in connection with the particular field or branch of the healing art which they desired to practice. The Texas Legislators have already provided for a Board to determine the qualifications of those who desire to practice general medicine and surgery or allopathy, for those who desire to practice chiropody, those who desire to be nurses, those who desire to practice pharmacy, those who desire to practice dentistry, and for those who desire to practice optometry. The Texas Legislators also have previously set up a Board to determine the qualifications of those who desire to practice Naturopathy. As set forth above, this was Article 4590d of the Revised Civil Statutes of Texas, 1925, as amended to date, and being Chapter 480, Acts of the Fifty-first Legislature, regular session, 1949, as amended by Chapter 343, Acts of the Fifty-third Legislature, Regular session, 1953. This Statute was declared void by the Texas Courts for two reasons: First, on the basis that the statute affirmatively

authorizes the limited practice of medicine and at the same time affirmatively denies that the Statute shall have such effect, and that therefore the Statute is incapable of interpretation and enforcement; and secondly, on the basis that such Statute gave preference to Naturopathy in view of the Texas Constitutional provision (Sec. 31, Art. 16, Texas Constitution, 1876) that no preference shall be given by law to any school of medicine. *Wilson v. State Board of Naturopathic Examiners (Tex. Civ. App., 1957), 298 S. W. 2d 946, Writ ref. by Tex. Sup. Ct. no reversible error; Certiorari denied 78 S. Ct. 121, 355 U. S. 870, 2 L. Ed. 2d 76, rehearing denied 78 S. Ct. 339, 355 U. S. 920, 2 L. Ed. 280.* Thereafter, the Texas Legislature in 1961 repealed such statute and transferred the Naturopathic Reregistration Fund to the General Revenue Fund. Acts 1961, 57th Legislature (Reg. Session), p. 263, Chapter 138. The repeal of such statute because it had been declared void by the Texas Courts is not an unusual procedure; and does not deter from the fact that the Texas Legislature had recognized Naturopathy as a separate, distinct and limited branch of the healing art that was separate and part from the all-inclusive general branch of medicine practiced by the general medical practitioner and surgeon, and that it should have its own standards, qualifications and licensing board. Also, the Legislature took advantage of repealing the statute after it had been declared void so as to be able to transfer the funds from the Naturopathic Reregistration Fund to the General Revenue Fund. It is obviously apparent from what the Texas Legislature had previously done in fostering and providing for a separate

statute to prescribe the qualifications for and setting up a Board to examine and grant licenses to persons desirous of practicing the limited field of Naturopathy, and from what all the testimony reveals that there is a different standard and field of endeavor between the practice of Naturopathy and the general practice of medicine and surgery or allopathy. Without question, there must be a much greater detail and extent in the examination for a person who is going to practice general medicine and surgery or allopathy than that which is required to be given to a person who is going to practice the simple, limited art of healing known as Naturopathy. To require a person who is going to practice Naturopathy to have to study to be a general medical practitioner and surgeon or allopath and to pass the same examination as a general medical practitioner and surgeon or allopath simply amounts to a prohibition of the practice of Naturopathy and is entirely unreasonable, and its effect will be to destroy one of the most important limited fields of the healing art, which is actually the oldest field of the healing art, and one which the drug and knife doctors and the general public are beginning to realize perhaps is one of the best systems of the healing art.

Summarizing, the Appellants do not believe that the Appellees can force the Appellants to qualify as general physicians and surgeons or allopaths in order to practice the more limited system of healing known as Naturopathy; nor do they believe that the Appellees have the authority to prohibit the practice of the limited system of healing known as Naturopathy.

Further, Appellants would like to say that the Texas Medical Practice Act, as interpreted and enforced by the Courts of Texas and the Appellees herein, is unconstitutional because it violates Sec. 2 of Art. IV of the Constitution of the United States of America which provides that: "The citizens of each state shall be entitled to all privileges and immunities of citizens of the several states."

Appellants further state that the Texas Medical Practice Act, as interpreted and enforced by the Courts of Texas and the Appellees herein, is unreasonable, discriminatory and unconstitutional in its operative effect when applied to the Appellants as Naturopathic physicians because it violates Sec. 1 of the Fourteenth Amendment to the Constitution of the United States which provides that, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person, within its jurisdiction equal protection of the law." And consequently, the said Texas Medical Practice Act, as interpreted and enforced by the Courts of Texas and the Appellees herein, is unconstitutional insofar as it affects Appellants herein because it violates Art. VI of the Constitution of the United States of America which provides that, "This Constitution and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land; and the judges in every state shall be bound thereby; anything in the Constitution and laws of any state to the contrary notwithstanding."

Appellants further state that the Texas Medical Practice Act, as interpreted and enforced by the Courts of Texas and the Appellees herein, constitutes an invalid exercise of the police power in that it bans or prohibits the practice of Naturopathy, a successful, recognized, harmless system of healing, under the guise of regulating or controlling it. Likewise, the Appellants further state that the said Texas Medical Practice Act, as interpreted and enforced by Courts of Texas and the Appellees herein, arbitrarily interferes with the rights of the Appellants herein by imposing unnecessary restrictions upon their pursuing a lawful trade and occupation, to-wit: the practice of Naturopathy. And likewise, the Appellants state that the Texas Medical Practice Act, as interpreted and enforced by the Courts of Texas and the Appellees herein, violates and repudiates the due process and equal protection guarantees of the law of the land.

In the alternative, Appellants assert that part of Sec. 31 of the Constitution of the State of Texas, 1876, which provides as follows:

> "But no preference shall ever be given by law to any school of medicine."

as interpreted and enforced by the Courts of the State of Texas and the Appellees herein, is void insofar as it applies to the Petitioners as Naturopaths, because such provision is contrary to the Constitution of the United States, the Amendments thereto, and the Federal Civil Rights Statutes, because, among other things, the Supreme Court of Texas has held that the aforesaid portion of the Texas Constitution is construed to mean a Naturopath who follows a

limited and separate school of medicine from the allopathic general medical practitioner and surgeon, must obtain a license from the Texas State Board of Medical Examiners, and if such construction is the correct construction to place on such provision in the Texas Constitution then such provision is illegal, void and unconstitutional as to these Appellants and is violative of the Constitution of the United States of America, the several amendments thereto, and the Federal Civil Rights Statutes, because it is unreasonable to require one who desires to practice the limited, minor field of naturopathy to qualify as a general medical practitioner and surgeon or allopath before he can practice as a naturopath, and because as all the testimony shows the Texas State Board of Medical Examiners examines only to determine if a person is qualified to practice general medicine and surgery in the allopathic school of medicine, and such Board is not prepared, equipped or learned in the Naturopathic School of Medicine, and which Board is not authorized to issue a license to practice Naturopathy. And likewise, the aforesaid portion of the Texas Constitution, as interpreted and enforced by the counties of Texas and the Appellees herein, is void as to the Appellants as Naturopaths, because it is repugnant to Sec. 1 of the Fourteenth Amendment to the Constitution of the United States of America, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Further, Appellants state that the aforesaid portion of the Texas Constitution, as interpreted and enforced by the Courts of Texas and the Appellees herein, under the

guise of protecting the public interests and as an alleged exercise of police power, is an illegal and arbitrary interference with private business and the imposition of unusual and unnecessary restrictions upon lawful occupations, all in violation of Sec. 1 of the Fourteenth Amendment to the Constitution of the United States of America. Appellants further state that the aforesaid portion of the Texas Constitution, as interpreted and enforced by the Courts of the State of Texas and the Appellees herein, is unconstitutional insofar as it applies to the Appellants as Naturopaths, in view of Sec. 1 of the Fourteenth Amendment to the Constitution of the United States of America, because said portion of the Texas Constitution is an arbitrary, unreasonable abridgement of the Appellants-citizens' rights and privileges and an invasion of their liberty to engage in lawful business, because of unreasonable requirements, onerous burdens impossible to perform, not fairly applicable, and prohibitive.

Appellants further state that the Texas Medical Practice Act and Sec. 31 of Art. 16 of the Constitution of the State of Texas are in violation of the Constitution and laws of the United States, and that therefore the Texas Medical Practice Act and the aforesaid Texas constitutional provision do not restrict the Appellants from practicing Naturopathy, a lawful occupation, and that the acts and conduct of the Appellees, acting under the color of the said Texas Medical Practice Act and the aforesaid portion of the Constitution of the State of Texas, in filing suits, prosecuting, and threatening to file suits against Appellants, both civil and criminal, to prevent Appellants from following their lawful profes-

sion, is a violation of the Appellants' civil rights as guaranteed to them by the Federal Statutes, and particularly Title 42, Sec. 1983, USCA, which provides for civil action for deprivation of rights, and which says that, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper procedure for redress."

The Appellants are entitled to a permanent injunction against the Appellees because of the Appellees' illegal actions in obtaining and intending to obtain injunctions, fines and forfeitures against the Appellants herein, and because the Appellants are now and are threatened by the Appellees to continue to be greatly harmed, damaged, imprisoned and injured by the aforesaid illegal, wrongful, knowing and purposeful acts of the Appellees; and because Appellants have no plain, adequate or efficient remedy at law to redress the said wrongful, knowing and purposeful acts of the Appellees other than by injunction, and because any other remedies to which they could be remitted would be attended by uncertainties, would involve a multiplicity of suits and would cause the Appellants irrevocable harm and injury and occasion undue hardship, vexation and delay, and because such permanent injunction should be issued so that the Appellants will not suffer irrevocable injury, harm, damage, imprisonment, profitures and fines.

CONCLUSION

WHEREFORE, for the reasons given, Appellants respectfully urge that in view of the fact that it is unreasonable to require Appellants who desire to practice Naturopathy to have to study to be a general medical practitioner and surgeon or allopath and to pass an examination given for a general medical practitioner and surgeon or allopath as prescribed by the Texas Medical Practice Act, before they can practice the simple, limited field of the healing art known as Naturopathy, that the Texas Medical Practice Act is unconstitutional insofar as it applies to the Appellants in their practice of Naturopathy; and conjunctively and in the alternative, both said Act and Section 31 of Article 16 of the Constitution of the State of Texas are unconstitutional in view of the Constitution of the United States and the Preamble thereto and especially the Fourteenth Amendment to said Constitution, insofar as said Act or said Act and Texas Constitutional provision apply to the Appellants as Naturopaths, and that the Texas Medical Practice Act and said Texas Constitutional provision are constitutional insofar as they apply to general medical practitioners and surgeons or allopaths; and both conjunctively and in the alternative that under the Federal laws, the said Texas Medical Practice Act is monopolistic in that it permits the practice of allopathy only and in effect prohibits the practice of Naturopathy and that as a matter of fact and law the civil rights laws of the United States have been violated; and that the Appellants are entitled to their permanent injunction against the Appellees, enjoining them and their agents, servants,

employees and successors in office, and those in concert with them from prosecuting, filing, and threatening to file civil and criminal suits against the Appellants because they are practicing Naturopathy, and to prevent Appellees from obtaining and attempting to obtain injunctions, fines and forfeitures against any imprisonment of the Appellants because they are practicing Naturopathy, and to prevent the Appellees from interfering with or molesting Appellants in their practice of Naturopathy in any way and for such other and further relief, both special and general, in law and in equity, to which the Appellants may be justly entitled; and finally, because the monumental, basic, and fundamental rights of citizenship of the Appellants and their Constitutional rights to follow and pursue a lawful occupation are being challenged, threatened and denied to them by the Appellees, and because the prodigious and momentous issue involving the future of the health of the American people is brought to a final determination in this case, the Appellants most strongly and fervently respectfully urge and pray to this Honorable Supreme Court of the United States that it note probable jurisdiction in this cause and that briefs be submitted herein on the merits and that this cause be set down for oral argument.

Respectfully submitted,

JAMES L. McNEES, JR.,
1309 Main Street,
Dallas, Texas,
Counsel for Appellants.

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL NO. 8034

CHARLES D. STUART et al.,
Petitioners,

v.

WILL WILSON, ATTORNEY GENERAL
OF THE STATE OF TEXAS
and
TEXAS STATE BOARD OF MEDICAL EXAMINERS
and
HENRY WADE, DISTRICT ATTORNEY
OF DALLAS COUNTY, TEXAS,
Defendants.

(July 23, 1962)

BEFORE Brown, Circuit Judge, and Estes and Hughes, District Judges.

PER CURIAM:

The 92 plaintiffs who term themselves "naturopathic physicians" brought this action to enjoin the Texas State

Board of Medical Examiners, the Attorney General of Texas, and the District Attorney of Dallas County from enforcing the provisions of Articles 4495-4512, Texas Revised Civil Statutes, commonly known as the Texas Medical Practice Act, asserting that such Act, as interpreted and enforced by the courts of Texas, violates the Constitution of the United States, the Constitution of the State of Texas, and the Antitrust and Civil Rights Laws of the United States. The plaintiffs asked that a three-judge court be convened for a determination of the case, pursuant to 28 U.S.C.A., Sections 2281, 2284. After a hearing on the pleadings only, the Court, with a single Judge presiding, dismissed the action for want of a substantial federal question. The Court of Appeals reversed and remanded. *Stuart v. Wilson*, 293 F. 2d 914. In remanding the case, the Court of Appeals stated that under the authority of *England v. Louisiana State Board of Medical Examiners*, 259 F. 2d 626, rehearing denied in written opinion 263 F. 2d 661, writ of cer. den. 359 U. S. 1012, "a substantial federal question has been raised in this case warranting a trial before a three-judge court."

Pursuant to the opinion of the Court of Appeals, this cause came on for a trial on the merits; and after hearing the pleadings, evidence and arguments and consideration of the briefs, the Court finds that the overwhelming preponderance of the evidence establishes:

1. Plaintiffs, "naturopathic physicians," are practicing medicine within the meaning of the Texas Medical Practice

Act, Article 4510, and insist on the right to continue such practice without complying with the requirements of such Act for obtaining a license to practice medicine.

2) The requirements of learning, skill and examination provided by the Texas Medical Practice Act for obtaining a license to practice medicine bear a direct, substantial and reasonable relation to the practice of medicine, including the practice of the healing art which plaintiffs call "naturopathy".

3) The Texas Medical Practice Act, as administered, does not discriminate against the plaintiffs nor violate any of their Constitutional or legal rights.

Accordingly, the Court concludes that:

1) The Texas Medical Practice Act, as interpreted and enforced by the courts of Texas, is not unreasonable, discriminatory nor unconstitutional in its operative effect when applied to the plaintiffs as so-called "naturopathic physicians";

2) The Texas Medical Practice Act, as administered, does not violate the Constitution of the United States, the Constitution of the State of Texas, the Antitrust laws of the United States, the Civil Rights Laws of the United States, nor any other laws of the United States or of the State of Texas;

3) Plaintiffs are not entitled to any relief in this action, must be dismissed on the merits, with taxable costs allowed to the defendants.

/s/ JOHN R. BROWN
United States Circuit Judge

/s/ JOE E. ESTES
United States District Judge

/s/ SARAH T. HUGHES
United States District Judge

APPENDIX II

Filed 23 day of July, 1962 at 9:10 o'clock A.M.
JOHN A. LOWTHER, Clerk
By Ramelle Hamilton, Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil No. 8084

CHARLES D. STUART, et al
Petitioners

VS.

WILL WILSON, ATTORNEY GENERAL
OF THE STATE OF TEXAS
and
TEXAS STATE BOARD OF
MEDICAL EXAMINERS
and
HENRY WADE, DISTRICT ATTORNEY
OF DALLAS COUNTY, TEXAS,
Defendants

JUDGMENT

This Court having on July 23, 1962, filed its *per curiam* opinion, including its findings of fact and conclusions of law, now, in accordance therewith, it is,

ORDERED, ADJUDGED and DECREED that the amended complaint herein be and the same hereby is dismissed on the merits, with taxable costs allowed to the defendants.

This, the 23, day of July, 1962.

JOHN R. BROWN
United States Circuit Judge

JOE E. ESTES
United States District Judge

SARAH T. HUGHES
United States District Judge

APPENDIX III

ORDER DISMISSING ACTION

Filed July 29, 1959

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION.

Civil Action No. 8084

CHARLES D. STUART, et al.,

Petitioners,

Vs.

WILL WILSON, ATTORNEY GENERAL OF THE STATE OF TEXAS, AND TEXAS STATE BOARD OF MEDICAL EXAMINERS, AND HENRY WADE, DISTRICT ATTORNEY OF DALLAS COUNTY, TEXAS,

Defendants.

On this the 25th day of July, 1959, came on to be heard Plaintiffs' First Amended Complaint for Permanent Injunction and Application for Temporary Restraining Order and Temporary Injunction, and Defendants' First Amended Motion to Dismiss and to Strike, in the above styled Civil Action on the docket of this Court. Came the Plaintiffs, by the through their attorney, and came the Defendants, by and through their attorney, and both parties announced

ready for the hearing. The Court, having heard both the Plaintiffs' Complaint and Application and the Defendants' Motion and the argument of counsel, is of the opinion, and so finds, that this said Civil Action should be dismissed for lack of a substantial federal question warranting exercise of jurisdiction and no facts are alleged entitling the Plaintiffs to any relief in this said Civil Action.

It is, Therefore, Ordered that Civil Action Number 8084, styled Charles D. Stuart, et al, Petitioners, vs. Will Wilson, Attorney General of the State of Texas, and Texas State Board of Medical Examiners, and Henry Wade, District Attorney of Dallas County, Texas, Defendants, be, and the same is, dismissed at the Plaintiffs' costs; and the Clerk of this Court is hereby directed to make the necessary entries on the docket and records of this Court to dismiss this said Civil Action.

Signed, Entered and Filed, this 29 day of July, 1959.

T. WHITFIELD DAVIDSON,
(T. Whitfield Davidson),
U. S. District Judge.

APPENDIX IV

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1959

ORDER DISMISSING APPEAL

STUART ET AL V. WILSON, ATTORNEY GENERAL OF TEXAS ET AL.
U. S.
APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

No. 495. Decided January 11, 1960.

PER CURIAM.

The Motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question.

APPENDIX V

SUPREME OF THE UNITED STATES
OCTOBER TERM 1959

ORDER DENYING PETITION FOR REHEARING

CHARLES D. STUART, et al,

Appellants

v.

WILL WILSON, ATTORNEY GENERAL OF TEXAS, et al,

No. 495

Former Decision, 80 S.Ct. 368.

Feb. 29, 1960. Petition for rehearing denied.

APPENDIX VI

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

AMENDED JUDGMENT DISMISSING APPEAL

STUART ET AL. V. WILSON, ATTORNEY GENERAL OF TEXAS ET AL.

U.S.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

No. 495. Decided April 25, 1960.

PER CURIAM.

The motion to recall and amend judgment is granted. The order of January 11, 1960, is vacated and the motion to dismiss is granted and the appeal is dismissed for want of jurisdiction.

APPENDIX VII

ORDER DISMISSING THE APPEAL AS MOOT. FILED FEBRUARY 17, 1960 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 18031

CHARLES D. STUART, ET AL.,

Appellant,

versus

WILL WILSON, ATTORNEY GENERAL OF TEXAS, ET AL.,

Appellees.

Appeal from the United States District Court for the Northern District of Texas.

ORDER:

It appearing that the Supreme Court has already decided this case on appeal, the attempted appeal to this Court has become moot, and the same is dismissed. The time within which appellant may apply for a rehearing is extended so that any such application may be made within fifteen days after the ruling of the Supreme Court of the United States on the petition for rehearing filed in that Court.

Appeal dismissed.

Enter for the Court this February 17, 1960.

(signed) RICHARD T. RIVES,
Chief Judge, U. S. Court of Appeals, Fifth Circuit.

APPENDIX VIII

ORDER SETTING ASIDE THE ORDER OF DISMISSAL AND REINSTATING THE APPEAL—FILED JULY 6, 1960

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18031

CHARLES D. STUART, ET AL,

Appellants,

versus

WJLL WILSON, Attorney General of the State of Texas, et al.,

Appellees.

Appeal from the United States District Court for the Northern District of Texas

(July 6th, 1960)

Before RIVES, Chief Judge, and CAMERON and WISDOM, Circuit Judges.

PER CURIAM:

The Supreme Court of the United States, on an attempted appeal of this case direct from the District Court, entered an order on January 11, 1960, as follows: "The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question."

Consequently on February 17, 1960, this Court entered an order as follows:

> "It appearing that the Supreme Court has already decided this case on appeal, the attempted appeal to this Court has become moot, and the same is dismissed. The time within which Appellant may apply for a rehearing is extended so that any such application may be made within fifteen days after the ruling of the Supreme Court of the United States on the Petition for Rehearing filed in that Court."
>
> "Appeal dismissed."

The Supreme Court on April 25, 1960, entered a further order in the attempted appeal to that Court, as follows:

> "The Motion to Recall and Amend Judgment is granted. The Order of January 11, 1960, is vacated and the Motion to Dismiss is granted and the appeal is dismissed for want of jurisdiction."

The appellants filed their petition for rehearing in this Court, to which the appellees replied stating: "Appellees do not resist the Petition for Rehearing insofar as it relates to reinstatement of this case upon the Docket of this Court."

At the same time the appellees filed a second motion to dismiss this appeal based upon different grounds.

Upon consideration, it is now ordered by the Court that the order of February 17, 1960, dismissing this appeal be set aside, and that the appeal be reinstated on the docket of this Court. It is further ordered that the case be taken under submission on the second motion to dismiss the appeal, and that briefs, which may be typed or mimeographed,

are requested from the parties. Appellees' brief in suppo
of such motion may be filed within twenty (20) days aft
the receipt of a copy of appellants' brief.

APPEAL REINSTATED.

APPENDIX IX

OPINION OF THE COURT DENYING SECOND MOTION TO DISMISS THE APPEAL. FILED SEPTEMBER 14, 1960

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18031

CHARLES D. STUART, ET AL.,

Appellants,

versus

WILL WILSON, ATTORNEY GENERAL OF THE STATE OF TEXAS, ET AL.,

Appellees.

Appeal from the United States District Court for the Northern District of Texas.

(September 14, 1960)

Before RIVES, Chief Judge, and CAMERON and WISDOM, Circuit Judges.

PER CURIAM: This case is submitted for decision on briefs in support of and in opposition to the appellees' second motion to dismiss the appeal.

"Initially the complaint in the district court was filed by some 92 persons, who described themselves as "all naturopathic physicians." They claimed to be pursuing a lawful occupation, and sought, inter alia, to enjoin the Texas State Board of Medical Examiners, the Attorney General of Texas, and the District Attorney of Dallas County, Texas, from enforcing the Texas Medical Practice Act, Articles 4495-4512, Texas Revised Civil Statutes, upon the ground that that statute and its enforcement were violative of several provisions of the Constitution of the United States. The complaint sought the convening of a three-judge district court to hear the case. Instead, the one-judge district court, after hearing arguments, ordered the action dismissed for lack of a substantial federal question warranting exercise of jurisdiction.

"In their second motion to dismiss the appeal the appellees urge that *Stratton, Secretary of State of Illinois v. St. Louis S.W. Ry. Co.*, 1930, 282 U.S. 10, is fatal to jurisdiction on direct appeal not only to the Supreme Court of the United States, but also to the Court of Appeals. Appellees insist that the only remedy possible available to the appellants is writ of mandamus from the Supreme Court.

In the *Stratton* case, supra, the Court held that a single judge has no jurisdiction to entertain a motion to dismiss such a complaint "on the merits," but stated also that the statute providing for a three-judge district court " • • • • applies only where there is a substantial claim of invalidity under the Federal Constitution. • • •".

In *Ex parte Poresky, 1933*, 290 U. S. 30, 32, the Court made it clear that a single-judge district court always has authority to dismiss for want of jurisdiction when the federal question lacks the necessary substance and no other ground of jurisdiction appears. To like effect is *California Water Service Co. v. City of Redding*, 1938, 304 U.S. 252, 254-255.

As said in *J. B. Schermerhorn, Inc. v. Holloman*, 10 Cir. 1934, 74 F.2d 265, 266:

> "A trial judge is authorized to determine in the first instance whether a case is one requiring disposition by a special court convened in accordance with the statute, and he is not required to call two additional judges to his assistance unless the case is of that nature. *Ex parte Williams*, 277 U.S. 267, 48 S.Ct. 523, 72 L.Ed. 877; *Independent Gin & Warehouse Co. v. Dunwoody* (D.C.) 30 F. (2d) 306; *Ross v. Goodwin* (D.C.) 40 F.(2) 532; *Green v. Hart* (D.C.) 41 F. (2d) 854; *United States B. & L. Ass'n v. McClelland* (D.C.) 6 F. Supp. 299. His decision upon the question is subject to review."

The case of *Wicks v. Southern Pacific Co.*, 9 Cir., 1956, 231, F.2d 130, 134, 135, seems directly in point, and we therefore quote at some length:

> "On authority of *Stratton v. St. Louis S.W. Ry. Co.*, supra, it is urged to us that a single district judge acts without jurisdiction when he grants summary judgment and dismissal of an action where the complaint raises the question of constitutionality of an Act of Congress by seeking relief in the form of 'an interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States * * *.' 28 U.S.C.A. §2282. In reliance upon the Strat-

ton case, supra, appellants now urge that the appropriate procedure following such action by the lower court was for them not to appeal to this Court (since it would lack jurisdiction in such an appeal) but rather to directly petition the Supreme Court for mandamus directing the district court judge to convene a three-judge court.

"We have found no case which adequately discusses and disposes of the precise issue thus tendered here, that is to say, the power of this Court to entertain an appeal from the refusal by the lower court to convene a three-judge court, and the granting of summary judgments and dismissals by the district judge. But we conclude that the cases called to our attention fail to sustain the jurisdictional contentions of appellants.

"From a reading of the Stratton and Proesky cases, supra, we are of the opinion that the trial judge sitting alone may initially determine if there is a 'substantial' federal constitutional issue presented by a complaint which seeks an interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress as being repugnant to the United States Constitution. We believe that a single district judge may dismiss a complaint if he decides that a substantial constitutional issue is not raised therein. It is only where a single district judge decides that a complaint raises a substantial constitutional issue and proceeds to decide that issue on its merits, that he acts without jurisdiction. The remedy for such action is to seek mandamus from the Supreme Court to compel the convening of a three-judge court to hear and decide the substantial constitutional issue in the case on its merits."

See also *Board of Supervisors of L.S.U., et al., vs. Tureaud*, 5 Cir., 1955, 225 F.2d 434, certiorari denied 351 U.S. 924; 1 Moore's Federal Practice, 2d ed., Sec. 0.205, p. 2233, n. 11.

The judgment of the district court is not "an order granting or denying, after notice and hearing, an interlocutory or permanent injunction" which will support a direct appeal to the Supreme Court (28 U.S.C.A. §1253). It is a final decision of the district court which will support an appeal to the Court of Appeals (28 U.S.C.A. §1291).

The second motion to dismiss the appeal is denied.

MOTION DENIED.

JUDGE CAMERON CONCURS IN THE RESULT.

APPENDIX X

OPINION OF THE COURT—FILED AUGUST 11, 1961

IN THE

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18031

CHARLES D. STUART, ET AL.,

Appellants,

versus

WILL WILSON, ATTORNEY GENERAL OF THE STATE OF TEXAS, ET AL.,

Appellees.

Appeal from the United States District Court for the Northern District of Texas.
(August 11, 1961)

Before CAMERON and BROWN, Circuit Judges, and HANNAY, District Judge.

HANNAY, District Judge: This suit was instituted in the United States District Court for the Northern District of Texas by 92 plaintiffs who term themselves "naturopathic physicians". They sought to enjoin the Texas State

Board of Medical Examiners, the Attorney General of Texas, and the District Attorney of Dallas County, Texas from enforcing the provisions of Articles 4495-4512, Texas Revised Civil Statutes, commonly known as the Texas Medical Practice Act.

Petitioners, hereinafter called appellants, also sought to have this action tried before a three-judge court, claiming that this case comes within the requirements of Title 28, U.S.C.A. 2281-2284.

Appellants attack the Texas Medical Practice Act on the grounds that it violates the United States Constitution, particularly the Preamble, Section 2 of Article IV, and Article VI of the Constitution of the United States, Section 1 of the XIV Amendment; also, the Anti-Trust Laws of the United States and the Constitution of the State of Texas, Section 31 of Article 16.

The trial judge, after a hearing on the pleadings only, dismissed the action for the stated reason that there was no substantial federal question involved and the federal court was without jurisdiction.

Thereafter appellants gave notice of appeal both to the United States Court of Appeals for the Fifth Circuit and to the Supreme Court of the United States. The appeal to the Supreme Court was pursuant to Title 28, U.S.C.A. Section 1253, which authorizes a direct appeal to the Supreme Court from decisions of three-judge district courts. The Supreme Court dismissed the appeal on January 11, 1960, for want of substantial federal question. On February 17,

1960, this court granted appellees' first motion to dismiss the appeal and granted appellants an extended time in which to file petition for rehearing. On July 6, 1960, this court reinstated the appeal. Appellees filed a second motion to dismiss the appeal based upon different grounds. Appellees' second motion to dismiss was denied by this court in a per curiam opinion dated September 14, 1960.

The district judge's dismissal of the case for want of a substantial federal question was ruled to be a final decision which would support an appeal to this court. It is the contention of appellants that this action is controlled by *England v. Louisiana State Board of Medical Examiners*, 259 F. 2d 626, rehearing denied in written opinion 263 F. 2d 661, writ of cer. den. 359 U.S. 1012. This court decided that the question of whether the State Statutes of Louisiana were unreasonable and arbitrary in regulating the qualifications for practice in medicine as it applies to chiropractors raised a substantial federal question which could only be decided in a hearing before a duly constituted three-judge court.

First, it is the appellees' contention that the Texas Medical Practice Act has heretofore been construed and that it was held to be constitutional. See *Schlicting v. Texas State Board of Medical Examiners*, 310 S.W. 2d 557; *Collins v. Texas*, 223 U.S. 288; *Keahey v. Texas*, 327 S.W. 2d 759.

Secondly, that 28 U.S.C.A. 1652 provides:

> "State Laws as Rules of Decision. The laws of the several states, except where the constitution or treaties of the United States or acts of Congress otherwise provide, shall be regarded as rules of decision in Civil Actions

in courts of the United States, in cases where they apply."

See *Wilson v. State Board of Naturopathic Examiners*, 298 S.W. 2d 946.

Thirdly, that appellants do not state sufficient facts to entitle them to practice any healing art under Article 4590, Texas Revised Civil Statutes, known as the Basic Science Law.

Fourthly, that the anti-trust laws of the United States do not apply to State activities. See *Hitchcock v. Collenberg*, 149 F.Supp. 894, cer.den. 353 U.S. 919.

We believe that a substantial federal question has been raised in this case warranting a trial before a three-judge court. The judgment is therefore reversed and the cause remanded for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.

APPENDIX XI

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
October Term 1960

No. 18031
D. C. Docket No. 8084 Civil

CHARLES D. STUART, ET AL.,

Appellants,

versus

WILL WILSON, ATTORNEY GENERAL OF THE STATE OF TEXAS, ET AL.,

Appellees.

Appeal from the United States District Court of the Northern District of Texas.

Before Cameron and Brown, Circuit Judges, and Hannay, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the

said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court;

It is further ordered and adjudged that the appellees, Will Wilson, Attorney General of the State of Texas, and others, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

August 11, 1961

Issued:

APPENDIX XII

SUPREME COURT OF THE UNITED STATES
October Term, 1961

No. 443

Order Denying Petition for Writ of Certiorari

WILL WILSON, ATTORNEY GENERAL OF THE STATE OF TEXAS, ET AL.,

v.

CHARLES D. STUART, ET AL.

Former decision, 361 U.S. 232, 80 S.Ct. 368; 362 U.S. 906, 80 S.Ct. 609; 362 U.S. 958, 80 S. Ct. 874.

Facts and Opinion, 282 F.2d 539; 293 F.2d 914.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

December 4, 1961. Denied.

APPENDIX XIII

The pertinent text of the Texas Medical Practice Act which is involved in this case is as follows:

Article 4495. Medical Board

The Texas State Board of Medical Examiners shall consist of twelve men, learned in medicine, legal and active practitioners in the State of Texas, who shall have resided and practiced medicine in this State, under a diploma from a legal and reputable college of medicine of the school to which said practitioner shall belong, for more than three years prior to their appointment on said Board. No school shall have a majority representation on said Board. Within thirty days after this Act becomes effective, the members of the first Board, as provided in this Act, shall be appointed by the Governor of the State. Of the members first appointed, four shall serve for a term of two years, or until their successors shall be appointed and qualified; four shall serve for a term of four years, or until their successors shall be appointed and qualified; and the remaining four members shall serve for a term of six years, or until their successors shall be appointed and qualified. Thereafter, at the expiration of the term of each member of the Board first appointed, his successor shall be appointed by the Governor of this State, and shall serve for a term of six years, or until his successor shall be appointed and qualified. The present members of the State Board of Medical Examiners, as created by Article 4495, Revised Statutes of 1925, shall remain in office until the members of the Texas State Board of Medical Examiners

provided for in this Act shall have been appointed by the Governor and shall have qualified. No member of said Texas State Board of Medical Examiners shall be a stockholder or a member of the faculty or a board of trustees of any medical school. Vacancies occurring in the Board shall be filled by the Governor. The word "medicine," as used in this Article, shall have the same meaning and scope as is given to it in Article 4510, Revised Civil Statutes of 1925. Acts 1907, p. 224, sec. 1; Acts 1931, 42nd Leg., p. 74, ch. 49, sec. 1.

Article 4498. Physicians to Register

It shall be unlawful for any one to practice medicine, in any of its branches, upon human beings within the limits of this State who has not registered in the District Clerk's office of every County in which he may reside, and in each and every county in which he may maintain an office or may designate a place for meeting, advising with, treating in any manner, or prescribing for patients, the certificate evidencing his right to practice medicine, as issued to him by the Texas State Board of Medical Examiners, together with his age, post office address, place of birth, name of medical college from which he graduated, and date of graduation, subscribed and verified by oath, when, if wilfully false, shall subject the affiant to conviction and punishment for false swearing, as provided by law. The fact of such oath and record shall be endorsed by the District Clerk upon the certificate. The holder of every such certificate must have the same recorded upon each change of residence to another

county, as well as in each and every County in which he may maintain an office, or in which he may designate a place for meeting, advising with, treating in any manner or prescribing for patients; and the absence of such record in any place where such record is hereby required shall be prima facie evidence of the want of possession of such certificate. Acts 1923, p. 292; Acts 1931, 42nd Leg., p. 74, ch. 49, sec. 2.

Article 4501—Examination

All applicants for license to practice medicine in this State, not otherwise licensed under the provisions of law must successfully pass an examination by the Texas State Board of Medical Examiners. The Texas State Board of Examiners is authorized to adopt and enforce rules of procedure not inconsistent with the statutory requirements. An applicant, to be eligible for examination, must be a citizens of the United States, or has filed his declaration of intention to become a citizen, and must present satisfactory proof to the Board that he is at least twenty-one (21) years of age, of good moral character, who has completed sixty (60) semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completing same, to the University of Texas for credit on a Bachelor of Arts Degree or a Bachelor of Science Degree, and who is a graduate of a bona fide reputable medical school; a reputable medical school shall maintain a course of instruction of not less than four (4) terms of eight (8) months each; and shall give a course of instruction in the fundamental subjects named in Article 4503 of the Revised Civil Statutes of Texas of 1925; and shall have the necessary teaching force and

possess and utilize laboratories, equipment and facilities for proper instruction in all of said subjects. Application for examination must be made in writing verified by affidavit, and filed with the Texas State Board of Medical Examiners on forms prescribed by the Texas State Board of Medical Examiners accompanied by a fee of Fifty Dollars ($50). All applicants shall be given due notice of the date and place of such examination; provided that the partial examination provided for in Article 4503 of the Revised Civil Statutes of Texas shall not be disturbed by this Article. Provided further that all students regularly enrolled in medical schools who graduate are now permitted to take the medical examination prescribed by law in this State shall upon completion of their medical college courses be permitted to take the examination prescribed herein. If any applicant, because of failure to pass the required examination, shall be refused a license, he or she, at such time as the Texas State Board of Medical Examiners may fix, shall be permitted to take a subsequent examination, upon such subjects required in the original examination as the Board may prescribe, upon the payment of such part of Fifty Dollars ($50) as the Board may determine to be reasonable. In the event satisfactory grades shall be made on the subjects prescribed and taken on such re-examination, the Board may grant the applicant a license to practice medicine. The Board shall determine the credit to be given examinees on the answers turned in on the subjects of complete and partial examination, and its decision thereon shall be final. Provided, however, the Secretary may issue a temporary license to practice

medicine to an applicant only after he has filed his completed application, together with an additional fee of Ten Dollars ($10), with the Secretary of the Texas State Board of Medical examiners, and that all of the other requirements as required for a permanent license are complied with; such temporary license shall be valid only until the date of the next Board meeting, and at that date the temporary license automatically expires, and is of no further effect. If the applicant fails the examination, no further permit shall be issued until he has successfully passed the examinations, or is eligible for and has been granted reciprocity. As amended Acts 1951, 52nd Leg., p. 753, ch. 410, sec. 1, Acts 1953, 53rd Leg., p. 1029, ch. 426, sec. 5.

Article 4503. Details of Examination.

All examinations for license to practice medicine shall be conducted in writing in the English language, and in such manner as to be entirely fair and impartial to all individuals and to every school or system of medicine. All applicants shall be known to the examiners only by numbers, without names, or other method of identification on examination papers by which members of the Board may be able to identify such applicants or examinees, until after the general averages of the examinees' numbers in the class have been determined, and license granted or refused. Examinations shall be conducted on anatomy, physiology, chemistry, histology, pathology, bacteriology, diagnosis, surgery, obstetrics, gynecology, hygiene, and medical jurisprudence. Upon satisfactory examination conducted as aforesaid under the rules

of the Board, applicants shall be granted license to practice medicine. All questions and answers with the grades attached, authenticated by the signature of the examiner, shall be preserved in the executive office of the Board for one year. All applicants examined at the same time shall be given identical questions. All certificates shall be attested by the seal of the Board and signed by all members of the Board, or a quorum thereof. The Board may in its discretion give examination for license in two (2) parts. The first part shall include such of the required scientific branches of medicine above-named as may be prescribed by the Board. The second, or final, part of the examination shall not be given until the applicant has graduated and has received a diploma from a reputable medical college, as the term "reputable medical college," is defined in Article 4501 of the Revised Civil Statutes of Texas of 1925, as amended by this Act. The Board may in its discretion admit to partial examination applicants who have successfully completed the work of the first two (2) years of the college course required of licentiates. The application for partial examination must be in writing, accompanied by an affidavit made by the dean, or registrar, of a reputable medical college within the meaning of the law, showing that the applicant has successfully completed the work of the first two (2) years of said course, and by a fee of Fifteen Dollars ($15). The Board may prescribe all other prerequisites of such applications. No license shall be granted to any applicant who has successfully passed such partial examination until all legal requirements for granting license have been complied with. All partial exami-

nations must be conducted in the same manner and under the same rules prescribed for complete, or full, examination. The fee for second, or final, examination shall be twenty-five ($25) dollars. Acts 1907, p. 224; Acts 1923, p. 288; Acts 1939, 46th Leg., p. 352, sec. 4.

Article 4590i—Construction of this Law

Nothing in this Chapter shall be so construed so as to discriminate against any particular school or system of medical practice, nor to affect or limit in any way the application or use of the principles, tenets or teachings of any church in the ministration to the sick or suffering by prayer, without the use of any drug or material remedy, provided sanitary and quarantine laws and regulations are complied with; and provided further, that all those so ministering or offering to minister to the sick or suffering by prayer shall refrain from maintaining offices, except for the purpose of exercising the principles, tenets or teachings of the church of which they are bona fide members. The provisions of the Chapter do not apply to dentists, duly qualified and registered under the laws of this State, who confine their practice strictly to dentistry; nor to duly licensed optometrists, who confine their practice strictly to optometry as defined by Statute; nor to duly licensed chiropractors, who confine their practice strictly to chiropractice is defined by Statute; nor to nurses who practice nursing only; nor to duly licensed chiropodists, who confine their practice strictly to chiropody as defined by Statute; nor to masseurs in their particular sphere of labor; nor to commissioned or contract surgeons of the United States

Army, Navy or Public Health and Marine Hospital Service, in the performance of their duties, and not engaged in private practice; nor to legally qualified physicians of other states called in consultation, but who have no office in Texas, and appoint no place in this State for seeing, examining or treating patients. This law shall be so construed as to apply to persons other than registered pharmacists of this State, not pretending to be physicians who offer for sale on the streets or other public places contraceptives, prophylactics or remedies which they recommend for the cure of disease. Acts 1907, p. 224; Acts 1923, p. 289; Acts 1939, 46th Leg., p. 352, sec. 5; Acts 1949, 51st Leg., p. 169, ch. 94, sec. 21(a).

Article 4509. Committees; Rules and Regulations; Subpoenas and Evidence; Injunction; Hearings.

The Texas State Board of Medical Examiners shall have the power to appoint committees from its own membership, and to make such rules and regulations not inconsistent with this law as may be necessary for the performance of its duties, the regulation of the practice of medicine, and the enforcement of this Act. The duties of any such committees appointed from the Texas State Board of Medical Examiners membership shall be to consider such matters pertaining to the enforcement of this Act and the regulations promulgated in accordance therewith as shall be referred to such committees, and they shall make recommendations to the Texas State Board of Medical Examiners with respect thereto. The Texas State Board of Medical Examiners shall have the power, and may delegate the said

power to any committee, to issue subpoenas, and subpoenas duces tecum to compel the attendance of witnesses, the production of books, records, and documents, to administer oaths and to take testimony concerning all matters within its jurisdiction. The Texas State Board of Medical Examiners shall not be bound by strict rules of evidence or procedure, in the conduct of its proceedings, but the determination shall be founded on sufficient legal evidence to sustain it. The Texas State Board of Medicine Examiners shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law. The Texas State Board of Medical Examiners shall be represented by the Attorney General and or the County or District Attorneys of this state. Before entering any order cancelling or suspending a license to practice medicine, the Board shall hold a hearing in accordance with the procedure set out in Article 4506, REVISED CIVIL STATUTES of TEXAS, as amended by this Act. As amended Acts 1953, 53rd Leg., 1029, ch. 426, Sec. 9.

Article 4510. Who Regarded as Practicing Medicine.

Any person shall be regarded as practicing medicine within the meaning of the law:

(1) Who shall publicly profess to be a physician or surgeon and shall diagnose, treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method or to effect cures thereof;

(2) or who shall diagnose, treat or offer to treat any disease or disorder, mental or physical or any physical deformity or injury by any system or method and to effect cures thereof and charge therefor, directly or indirectly, money or other compensation; provided, however, that the provisions of this Article shall be construed with and in view of Article 740, Penal Code of Texas, and Article 4504, Revised Civil Statutes of Texas as contained in this Act. As amended Acts, 1953, 53rd Leg., p. 1029, Ch. 426, Sec. 10.

Article 4511. Definitions

The terms, "physician," and "surgeon," as used in this law, shall be construed as synonymous, and the terms, "practitioners," "practitioners of medicine," and "practice of medicine," as used in this law, shall be construed to refer to and include physicians and surgeons, Acts, 1907, p. 234.

APPENDIX XIV

Article XVI, Section 31, Texas Constitution, 1876.

Section 31. The Legislature may pass laws proscribing the qualifications of practitioners of medicine in this State, and to punish persons for malpractice; but no preference shall ever be given by law to any schools of medicine.

APPENDIX XV

No. 8737

STATE OF IDAHO *ex rel.*, STATE BOARD OF MEDICINE of the State of Idaho,
S. M. Poindexter, Chairman,
Plaintiff-Appellant,

v.

DAVID SMITH,
Defendant-Respondent.

Supreme Court of Idaho.
April 8, 1959.

Action by state to enjoin defendant from advertising himself as naturopathy doctor on ground that he was not licensed to engage in practice of medicine and surgery or other healing art. The District Court, Ada County, Doran H. Sutphen, J., sustained defendant's demurrer, and state appealed. The Supreme Court, Bellwood, J., held that complaint did not state facts sufficient to constitute cause of action.

Affirmed.

* * * * *

On February 21, 1955, appellant filed its Second Amended Complaint in which it is alleged, among other things:

"II

"That Defendant, David Smith, is a resident of Ada County, State of Idaho, and that he is not now, and

never has been, the holder of a license to practice medicine and surgery in the State of Idaho and is not now and never has been the holder of a license to practice any of the healing arts in the State of Idaho.

"III

"That Defendant presently advertises, in the manner alleged in Paragraph VI of this Second Amended Complaint, in Ada County, State of Idaho, as one being willing and able to investigate and diagnose both real and imagined mental and physical ailments of the human body, of the types commonly investigated and diagnosed by practicing naturopathic doctors in Idaho, with the view of relieving the same.

"IV

"That Defendant presently advertises in Ada County, State of Idaho, as one being willing and able to treat both real and imagined mental and physical ailments of the human body, with the view of relieving the same by methods commonly employed by practicing naturopathic doctors in Idaho.

"V

"That naturopathic doctors in Idaho, in treating real and imagined mental and physical ailments of the human body with the view of relieving the same, commonly employ physical culture and drugless treatment of disease (other than surgery) by all known methods supposed to stimulate or assist nature, as for example, by the use of light, air, water, heat, rest, diet, herbs and massage.

"VI

"That Defendant advertises himself as a practicing naturopathic doctor, as alleged in Paragraphs III, IV and V of this Second Amended Complaint, by maintain-

ing a sign on the door of a building located at 6102 Fairview Avenue near the northwesterly boundary of Boise City, Ada County, Idaho, said sign reading as follows:

" 'David W. Smith, N.D.
Hours by Appointment
Entrance'

"and causing to be maintained in the current (Fall) edition of the Boise Telephone Directory of the Mountain States Telephone and Telegraph Company the following entries:

" 'Smith David W. natrpthc phys
6112 Fairview av—4-3681'
(page 63 of the Directory)

and

" 'Naturopathic physicians

* * * * *

Smith David W. 6112
Fairview av—4-3681'
(page 91 of the Directory)

"VII

"That Defendant threatens to continue to advertise in the manner set forth in Paragraphs III, IV, V and VI of this Second Amended Complaint.

"VIII

"That, unless restrained and enjoined from so doing, the continuation of the acts mentioned in Paragraphs III, IV, V, VI and VII of this Second Amended Complaint would endanger the public health, safety and welfare in Ada County, Idaho."

By the second amended complaint the appellant seeks (1) an injunction that the acts of the respondent thus alleged constitute the practice of medicine and surgery or the prac-

tice of one or more of the other healing arts for which the State of Idaho requires license, and (2) a permanent injunction restraining the respondent from advertising as thus alleged.

On February 25, 1953, respondent filed a two-part demurrer to the second amended complaint (1) that it does not state facts sufficient to constitute a cause of action against respondent and (2) that it is ambiguous, unintelligible and uncertain in enumerated particulars; and a motion to strike therefrom paragraphs III, IV, V, VI, VII and VIII.

On June 11, 1953, the district court sustained "said demurrer" . . . "without leave to plaintiff (appellant) to amend" and granted the motion to strike as regards paragraphs III, IV, VI, VII and VIII. There followed the district court's judgment of dismissal of the second amended complaint and the action based thereon, from which this appeal is taken. Among other charges of error, appellant urges that the district court erred in sustaining the demurrer and not overruling the same.

Chapter 18, Title 54, I.C., regulates the practice of medicine and surgery. Section 54-1802, I.C., provides, in pertinent part as follows:

> "(a) Any person shall be regarded as practicing medicine and surgery who shall advertise in any manner, or hold himself or herself out to the public, as a physician and surgeon, or either; or who shall investigate, diagnose or treat, or offer to investigate, diagnose or treat, any physical or mental ailment or disease, real or imagined, of any person with a view to relieving the same, as is commonly done by physicians and sur-

geons, or suggest, recommend, prescribe or direct for the use of any person, sick, injured or deformed, any drug, medicine, means or appliance for the intended relief, palliation or cure of the same, or who shall suggest, recommend, prescribe, or direct an operation on any such sick, injured or deformed person or who shall perform, or offer to perform, any such operation whether or not such person receives therefor, either directly or indirectly, any fee, gift or compensation of any kind whatsoever or in any manner whatsoever: Provided, however, that the definition of the practice of medicine and surgery as defined above shall not be construed to include the practice by any person of a healing art which is a system or mode of treating the sick or afflicted which is, or may hereafter be, licensed under the laws of this state if the person practicing such healing art holds a license from the state entitling him to engage in the practice of such healing art, including licensed pharmacists while engaged in the practice of their profession: and provided further, that the provisions of this act shall never be construed to affect in any manner the practice of the religious tenets of any church or religious belief. * * *"

Section 54-1803, I.C., makes it unlawful to practice medicine and surgery without a license, and Section 54-1815, I.C., authorizes injunctions to restrain violations.

Chapters 7 and 16 of Title 54, I.C., regulate chiropractic and osteopathy, respectively.

Naturopathy is not expressly regulated or licensed by the Idaho Code.

Appellant contends that the practice of medicine and surgery (Sec. 54-1802, supra) includes every aspect of each and every branch of the entire healing art except those separately licensed; that insofar as the pratice of chiropractic or

osteopathy covers naturopathy, the latter, to the extent covered, can be practiced only by the holder of a license in the covering field of healing; that insofar as naturopathy is not thus covered by such practices, it is covered by the all-inclusive field of medicine and surgery, and thus, to that extent requires a license in medicine and surgery, and finally, that Chapter 18 of Title 54, I.C., as it thus regulates or relates to naturopathy, is a constitutional exercise of the police powers in its requirement that practicing naturopaths must hold a license in a healing art.

With appellant's contentions we cannot agree. Principles applicable here, and controlling, have appeared heretofore in this Court's decisions.

[1] The substance of the second amended complaint is that the respondent is holding himself out as a naturopathic doctor or physician and that he is threatening and advertising that he is engaging and will continue to engage in the practice of naturopathy. While it is primarily a legislative prerogative to determine what constitutes permissible practice of naturopathy or define what naturopathy is, it would not be amiss to examine the same. Webster's New International Directory, 2nd Ed., provides the following definitions:

Naturopathy: (L. *natura*, nature + pathy) a system of physical culture and drugless treatment of disease by methods supposed to simulate or assist nature.

Pathy : A system of treating disease.

The American Illustrated Medical Dictionary, 22nd Ed., provides the following definition:

> Naturopathy: A drugless system of therapy by the use of physical forces, such as air, light, water, heat, massage, etc.

The legislature, by Section 54-1802, supra, has defined the practice of medicine and surgery.

By Section 54-712, I.C., the legislature has defined the practice of chiropractic as follows:

> "Any licentiate under this chapter may adjust any displaced segment of the vertebral column or any displaced tissue of any kind or nature, for the purpose of removing occlusion of nerve stimulus in the bodies of human beings; and practice physiotherapy, electrotheraphy, hydrotherapy, as taught in chiropractic schools and colleges, but nothing herein contained shall allow any licentiate to prescribe medicine, perform surgical operations or practice obstetrics."

While the legislature has provided regulatory measures for the practice of osteopathy, it has not defined the same. But in State v. Sawyer, 36 Idaho 814, 214 P. 222, among several definitions we find the following:

> "Osteopathy • • • is a system of treating diseases of the human body without drugs and by means of manipulation."

[2] From these definitions of the practices of medicine and surgery, chiropractic and osteopathy, it must be evident that the calling or profession of one differs materially from the calling or profession of the others; that the system of healing employed by the naturopath has little in common

with that employed by the physician and surgeon, the chiropractor or the osteopath; and that while the physician and surgeon is authorized to treat the sick and afflicted by any and all methods and means, the naturopath, the chiropractor and the osteopath are limited in their treatments to their particular systems. Naturopathy may not be as generally known as the three branches of the healing art just referred to, but it has been and is recognized as a separate and distinct system of the healing art.

[3] No persuasive reason has been assigned, nor is one indicated for departing from the principles pronounced in State v. Armstrong, 38 Idaho 493, 225 P. 491, 33 A.L.R. 835, and State v. Fite, 29 Idaho 463, 159 P. 1183. Whether the question occupation be chiropody, as in the Armstrong case, or naturopathy, as in this case, the principles are equally applicable. The right to follow a recognized occupation is a right protected by the constitutional guarantees of liberty: Fourteenth Amendment to the Federal Constitution; Idaho Constitution, Art. 1, Sec. 13; Berry v. Summers, 76 Idaho 446, 283 P. 2d 1093.

[4-6] A calling may not be prohibited unless it is inherently injurious to the public health, safety or morals, or unless it has a tendency in that direction. State v. Armstrong, supra. Here the respondent is not in anywise holding himself in the capacity of a physician or surgeon, a chiropractor, or an osteopath; he holds himself out as a practitioner of the recognized branch of the healing art designated naturopathy. If the naturopath is limited in his practice to the use of a system of physical culture and drugless treat-

ment by methods supposed to stimulate or assist nature, or to the use of physical forces such as air, light, water, heat, massage, and other similar simple materia medica, the system cannot be inherently injurious or have a tendency in that direction. Nothing is indicated which would justify prohibiting naturopathy. And appellant disclaims any such intention on the part of the legislature. Naturopathy does bear some relation to the public health, and there can be no question but that the legislature has power to regulate all callings related to the public health. The contention is that naturopathy is regulated by Chapter 18 of Title 54, I.C., by requiring that a naturopath obtain one of the different sorts of licenses provided by law such as that for a physician and surgeon, a chiropractor, or an osteopath.

[7, 8] To require one desiring to engage in the practice of naturopathy to meet the requirements prescribed for physicians and surgeons would be an unreasonable regulation of a recognized calling, unnecessary for the public's protection. It would in most, if not all, instances amount to prohibition. So far as Section 54-1802, I.C., affects the practice of naturopathy, the act is unconstitutional and void. So far as it affects the branches of the healing art licensed by the statutes and all callings or practices sufficiently related to fall within them, it is valid.

[9] We adhere to and approve in this case the principles announced in the Armstrong and Fite cases above cited, and conclude that the respondent's demurrer was correctly sustained below. By virtue of the foregoing, it is unnecessary

to consider the lower court's ruling on respondent's motion to strike; even so, the ultimate result would remain unaffected.

The judgment of dismissal of appellant's second amended complaint is affirmed.

Costs to respondent, I.C. Sections 54-1809, 54-1815; Snake River Mutual Fire Insurance Co. v. Neill, Idaho, 336 P. 2d 107.

TAYLOR, SMITH, KNUDSON and McQUADE, JJ., concur.

PORTER, C. J., not participating.

Supreme Court, U.S.
FILED
DEC 6 1962
JOHN F. DAVIS, CLERK

No. 543

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

CHARLES D. STUART, et al.,
Appellants

v.

WILL WILSON, ATTORNEY GENERAL OF TEXAS,
AND
TEXAS STATE BOARD OF MEDICAL EXAMINERS,
AND
HENRY WADE, DISTRICT ATTORNEY OF DALLAS COUNTY, TEXAS
Appellees

MOTION TO AFFIRM OR DISMISS

WILL WILSON
Attorney General of Texas

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Capitol Station
Austin, Texas

TOM L. McFARLING
Of Counsel

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No. ----------

IN THE

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OCTOBER TERM, 1962

CHARLES D. STUART, et al.,
Appellants

vs.

WILL WILSON, ATTORNEY GENERAL OF TEXAS,
AND
TEXAS STATE BOARD OF MEDICAL EXAMINERS,
AND
HENRY WADE, DISTRICT ATTORNEY OF DALLAS COUNTY, TEXAS
Appellees

MOTION TO AFFIRM OR DISMISS

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the final judgment and decree of the Three Judge United States District Court for the Northern District of Texas, Dallas Division, be affirmed or that the appeal taken therefrom be dismissed on the grounds that the only questions presented are so unsubstantial as to not warrant further argument.

STATEMENT

This is a direct appeal from the final judgment and decree entered on July 23, 1962, by a specially constituted Three Judge District Court for the Northern District of Texas which dismissed Appellants' action "on the merits" after a full and complete hearing of all the evidence.

Appellants proceed assuming the questions presented here are *What is naturopathy* or *What should naturopaths be allowed to do in the State of Texas.* Such inquiry is not appropriate here. The true inquiry is what can the State of Texas constitutionally do to insure competency of those who would practice the healing arts in Texas? Legislative powers are to be tested, not the philosophy of naturopathy.

The Texas Medical Practice Act does not prohibit the practice of naturopathy by Appellants (as is done in some states). That Act merely prohibits practice of any of the healing arts by incompetent, ill-trained and uneducated practitioners, whether they are naturopaths, allopaths, osteopaths, homeopaths, eclectics or adherants to any other school of thought. Stripped of verbage, Appellants' action does not claim that the regulations imposed by the State of Texas are unreasonably related to their object, but their only complaint is that because of their lack of education and training they cannot meet those basic standards.

In this Motion, as in the entire record, in all statutes and court opinions of Texas Courts, the terms "medicine" or "medical" are used in the broad sense. The terms are not exclusive, but inclusive.

They do not designate the use of pharmaceutical products, members of the American Medical Association, or those who have M.D. degrees as distinguished from those holding other degrees.

For the convenience of this Court, a short narrative contextual history of this litigation is attached to this Motion as appendix "A."

STATUTES INVOLVED

The Texas Medical Practice Act consists of Chapter 6, Title 71, of the Revised Civil Statutes of Texas (Articles 4495-4512, Vernon's Civil Statutes of Texas); and Chapter 6, Title 12, Revised Penal Code of Texas (Articles 739-745, Vernon's Penal Code of Texas); all as amended by House Bill 254, Acts, 53rd Legislature of Texas, 1953, Chapter 426, page 102.

Also involved is Article XVI, Section 31 of the Constitution of Texas.

Selected portions of the above Statutes are reproduced in Appellants' Jurisdictional Statement, pages 27a to 38a. A narrative summary of the Statutes is contained in Appendix "B" attached hereto.

ARGUMENT IN SUPPORT OF MOTION

The judgment of the Three Judge District Court below is plainly correct and in accord with interpretations of the highest appellate court of the State of Texas. It is in accord with the consistent holdings of all Federal Courts on the issues involved. Further, the judgment is consistent with and supported by all of the testimony heard below. Not only did the

Appellants fail to meet their burden to support their allegations, but the Appellees affirmatively proved that the regulatory statute in question here is reasonable, wise, non-discriminatory, efficient and rather lenient.

The court below predicated its judgment on correct interpretations of the Texas Medical Practice Act. See: *DeHay v. State*, 254 S.W. 2d 513 (1952); *Schlichting v. Texas State Board of Medical Examiners*, 298 S.W. 2d 946 (error ref. n.r.e., S. Ct. of Tex.; Cert. Den. 355 U.S. 870, reh. den. 355 U.S. 920); *Kraley v. State*, 327 S.W. 2d 759 (Cert. Den. 361 U.S. 830, her. den. 361 U.S. 904); *Wilson v. State Board of Naturopathic Examiners*, 290 S.W. 2d 946 (Error Ref. n.r.e., S. Ct. of Tex., Cert. Den. 355 U.S. 870, reh. den. 355 U.S. 920). In the above cited cases, the Texas courts are consistent with the rulings of other states on related questions. See: *Davis v. Becker*, 207 S.W. 2d 343 (Appeal Dismissed, 333 U.S. 859); *Dantzler v. Callison*, 94 S.E. 2d 177 (Appeal Dismissed, 352 U.S. 939 for want of a substantial question). In the last two cases, the statutes affirmatively prohibited the practice of naturopathy rather than just regulating it as is done in Texas. Also see: *Beck v. Binks*, 165 S.W. 2d 292 (Sup. Ct. Illinois); *Missouri v. Errington*, 317 S.W. 2d 326 (Cert. Den. 359 U.S. 892); *Missouri, ex rel. Collet v. Scopel*, 316 S.W. 2d 515; *Lucas v. State*, 99 N.E. 2d 419; *Taylor v. Oklahoma*, 291 P. 2d 1033 (Appeal Dismissed, 352 U.S. 805).

The judgment of the court below closely follows the Federal precedents in point. The Texas Medical Practice Act is substantially unchanged from the

time it was first held to be a constitutional regulation by this Honorable Court in *Collins v. Texas*, 223 U.S. 288 (1912). Although Federal questions have been raised in some of the cases from Texas, this Honorable Court has constantly denied relief on any question concerning the Texas Medical Practice Act. Appellants can cite no case from this Honorable Court or from any other Federal Court in support of their premises. Indeed, every Federal case Appellants cite in the Jurisdictional Statement (of those having any remote connection with the issues involved here) directly refute Appellants' position, as only a few examples will illustrate. See: *Dent v. West Virginia*, 129 U.S. 114; *Douglas v. Noble*, 261 U.S. 165; *Graves v. Minnesota*, 272 U.S. 425. Furthermore, every point Appellants raise here was raised in a United States District Court in Maryland, under a State Statute basically the same as the Texas Act, and that Federal Court soundly rejected each point. See: *Hitchcock v. Collenberg*, 140 F. Supp. 894, (D. Maryland, 1956, Affirmed 353 U.S. 919)

Case authority, both state and Federal, supports the judgment of the court below. All of the valid testimony in the record supports the judgment. Without belaboring the record, suffice it to say that none of Appellants have ever even attempted to meet the requirements they now attack. None of the Appellants has any substantial schooling to qualify them to practice the healing arts. The record reflects that there is no accredited school of naturopathy in the United States. The record shows that diplomas and schooling claimed by Appellants, for the most part,

are from notorious diploma mills or from non-existent schools.

Each Appellant questioned admitted that the subject matter of the examination required by the Texas Medical Practice Act concerned matters one would need to know to practice any healing art, including naturopathy.

The most significant body of testimony in the record consists of admissions from Appellants that they desire to treat any and all sorts of human illnesses or conditions, physical or mental, by almost any means known to modern man. They would include treatment of arthritis, cancer, leukemia, Bright's disease, hardening of the arteries, tuberculosis, tumors, cataracts of the eye, high blood pressure, mental illnesses of all kinds, heart conditions, etc. Appellants also seek to perform such "minor surgery" as the radical removal of cancer from the female breast and plastic surgery.

Appellants accuse the State of Texas of having an unreasonable statutory regulation in requiring anyone who would embark on such a significant endeavor as treating the human body to have some small and basic understanding of the problems involved and to show a minimum educational background in such matters! There simply is no common sense, logic, good faith or legal justification for their claims, much less any substantial Federal question with which this Honorable Court should concern itself.

As a collateral matter, Appellants' attack as discriminatory Article XVI, Sec. 31 of the Constitution of Texas which prohibits the Texas Legislature from

giving any preference to —or discriminating against —any particular school or branch of the medical arts. It is difficult for Appellees to conceive of how a State Constitution non-discrimination provision, fairly and impartially interpreted and enforced, could be violative of the Federal Constitution which prohibits just such discrimination and preference. The Federal Constitution is a strange source and this Honorable Court is a strange forum from which to *seek* discrimination.

CONCLUSION

It is respectfully submitted that the Appellants failed to show in the court below that Appellees, by enforcing the Texas Medical Practice Act, or that the Medical Practice Act, violated any of their Constitutional rights or that any of the findings of fact or conclusions of law made by the court below are in error. Therefore, this Motion to Affirm or Dismiss should be granted and the costs of this appeal should be assessed against the Appellants.

WILL WILSON
Attorney General of Texas

SAM R. WILSON
Assistant Attorney General
of Texas

TOM I. MCFARLING
Special Assistant Attorney
General of Texas, of Counsel.

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I am one of the attorneys of record for Appellees in the above entitled cause and that I am a member of the Bar of the United States Supreme Court, and that I have served a copy of the above and foregoing Motion to Affirm or Dismiss on Mr. James L. McNees, Jr., 407 Davis Building, 1309 Main St., Dallas, Texas, by placing a copy of the Motion in the United States Mail, properly addressed and stamped, on this the 7 day of ~~November~~ December, 1962.

APPENDIX "A"

CONTEXTUAL HISTORY OF THIS LITIGATION

On February 16, 1961, one Dr. DeHay, a naturopathic physician in Dallas County, attended a woman during childbirth after giving extensive pre-natal care. Charges of illegal practice of medicine were filed. DeHay was convicted. At the trial, DeHay attempted to show, in defense, that he was a licensed naturopath, but the tender was rejected by the Court. Article 4590d, Vernon's Civil Statutes of Texas, The Texas Naturopathic Act, was then in full force and effect, and DeHay was licensed by the Board of Naturopathic Examiners to practice in Texas. The conviction was upheld by the Texas Court of Criminal Appeals in *DeHay v. State*, 254 S.W. 2d 513 (1952). That Court said:

> "Whether Appellant was or was not a licensed practitioner of naturopathy as provided by Chap. 480, Acts Regular Session of the 51st Legislature in 1949, and appearing as Art. 4590d, Vernon's R.C.S., *is immaterial* to any issue in the case. Furthermore, such act does not provide a defense to the instant accusation, for, by the express provisions of Sec. 18 of the act, a license to practice naturopathy does not authorize the practice of medicine thereunder.
>
> "The reference above made is not to be construed as a recognition of the validity of the naturopathy act. That question is not before us." (Emphasis added)

Generally, that represents the attitude of the Texas Courts on this question in both civil injunction suits and criminal prosecutions; in cases both before

the Naturopathic Act was held to be unconstitutional and after it was so held. Under the Medical Practice Act, it is immaterial whether the individual against whom the action is brought be an attorney, an architect, a naturopath, an engineer, a dentist, a contractor, or one in any other profession or business. The sole question in those cases has been: (1) did he commit the acts charged; (2) are the acts charged such as to be the "practice of medicine" as defined in Article 4510, Vernon's Civil Statutes of Texas; (3) if so, did such individual have a license issued by the Texas State Board of Medical Examiners?

After the DeHay conviction was upheld, the District Attorney of Bexar County requested an opinion of the then Attorney General of Texas, Mr. John Ben Sheppard, as to the constitutionality of the Naturopathic Act. The opinion, No. S-60 (1953), concluded that the act violated the Texas Constitution and was void. Thereafter, a vacancy occurred on the Naturopathic Board, but the Governor refused to fill it. The next session of the legislature refused to appropriate any money for the operation of the Board, and the Comptroller of Public Accounts refused to issue warrants from available funds of the Board. The State Auditor refused to audit the books. The Naturopathic Board tendered fees to the Comptroller who refused to accept them for deposit. In effect, no state agency or officer recognized the legal existence of the Board of Naturopathic Examiners, or of the Naturopathic Act.

The Naturopathic Board then brought suit in its own name against the then Attorney General, Mr. Sheppard, the Comptroller and the Governor, seek-

ing a declaratory judgment of the Naturopathic Act and sought mandatory relief. In the meantime, the Defendant, Will Wilson, became the Attorney General of Texas, and was substituted as a Defendant.

In *Wilson v. State Board of Naturopathic Examiners*, 298 S.W. 2d 946, (Civ. App. 1957; error ref. n.r.e., S. Ct. Tex.; cert. den., 355 U.S. 870, reh. den., 355 U.S. 920), the Supreme Court of Texas said that the sole question before them was the constitutionality of Article 4596j. The Texas Naturopathic Act. The Court said in part:

> "(1) It is obvious that the practice of medicine as defined by Art. 4510 supra, includes the practice of naturopathy as defined by the above statute." (Referring to the Texas Naturopathic Act.)
>
> "It is also obvious that the practice of naturopathy as so defined is the practice of medicine as statutorily defined but limited to certain means and excluding specific means.
>
> "(2) Thus it is evident that while the naturopathy statute affirmatively authorizes a limited practice of medicine, it also affirmatively denies that the statute will have such effect.
>
> "We are uncertain as to which legislative path we should follow. This uncertainty, in our opinion, spells the death of the statute.
>
> . . .
>
> "It is our opinion that the Naturopathy Act attempts to both grant and deny to those complying with its terms the privilege of practicing medicine as that term is defined by the statutes of this State. It is, therefore, impossible of in-

terpretation and enforcement and is wholly void."

Not only was the statute void for vagueness, but it also contravened Article XVI, Section 31 of the Constitution of Texas, because it granted to this "school" of thought (known as naturopathy) a preference over other "schools" of thought:

> "The differences between the requirements of the Medical Practice Act and those of the Naturopathic Act are apparent and substantial. It is equally apparent that the requirements of the Medical Act are more burdensome than those of the Naturopathic Act. It follows that an unconstitutional preference was attempted in favor of the latter school of medicine and that it is inoperative and void."

After the *Wilson* case became final, the Texas naturopaths still continued to practice without any type of valid license, just as some are practicing as this case is being heard. (See testimony of the plaintiff Hoyle, for example.)

In 1957, the Attorney General of Texas, together with many local prosecuting officials, filed civil injunction suits under The Texas Medical Practice Act against persons illegally engaged in the practice of medicine in Texas. Some of the Plaintiffs in this suit were included.

One such injunction suit was filed in Midland County against Henry Schlichting. In *Schlichting v. Texas State Board of Medical Examiners*, 158 Tex. 279, 310 S.W. 2d 557 (1958), the Supreme Court of Texas upheld the propriety of the injunctions as against Schlichting's allegation that the Texas Med-

ical Practice Act did not authorize the injunctions. Also, Schlichting urged that the injunctions and the Texas Medical Practice Act violated the Texas Constitution and the 14th Amendment to the Constitution of the United States, but the Supreme Court of Texas said:

> "We are cited to no decisions indicating the constitutional provisions in question to be violated by the injunction and hold that they are not."

The precise questions presented in the instant case were available for determination in the *Schlichting* case, but the naturopaths did not pursue their available remedies to have them ultimately determined.

Since the *Schlichting* case, many civil injunctions have been granted in state courts against the illegal practice of medicine by naturopathic physicians, but none have been appealed. Criminal charges have been filed against some naturopathic physicians for violation of the Texas Medical Practice Act. One of the Plaintiffs in this cause was convicted in Bexar County after this suit was filed, and his conviction was upheld by the Texas Court of Criminal Appeals. The Supreme Court of the United States refused certiorari, thereby lending an inference that there was no substantial deprivation of constitutional rights involved in the enforcement of the Texas Medical Practice Act as against those who were illegally practicing medicine. (*See: Keahey v. State*, (1959) 327 S.W. 759; (cert. den., 361 U.S. 830, reh. den., 361 U.S. 904.)

One other suit completes the context of litigation. In 1958, some of the Plaintiffs in this cause filed

Civil Action 7750 in the United States District Court for the Northern District of Texas, Dallas Division, against the Attorney General of Texas and the Texas State Board of Medical Examiners raising the same questions raised here. That suit was dismissed, without prejudice, by Judge Atwell on April 14, 1958, because ". . . the Court does not have jurisdiction over the parties or over the subject matter. . . ." No appeal was taken.

On March 6, 1959, this action was filed. After preliminary matters were disposed of, the specially convened Three-Judge District Court for the Northern District of Texas, on July 23, 1962, dismissed the cause on the merits after a full hearing.

APPENDIX "B"

STATE STATUTE INVOLVED

The Texas Medical Practice Act is substantially unchanged from the time it was first held to be constitutional in *Collins v. Texas*, 223 U.S. 288 (1912).

For the convenience of the Court, The Texas Medical Practice Act can be summarized as follows: an applicant for licensure must be over the age of twenty-one years and of good moral character; must have completed sixty semester hours of undergraduate schooling of a quality acceptable for transfer of credits to the University of Texas on a B.A. or B.S. degree; must be a graduate of a bona fide reputable medical school, (defined in Article 4501 as being a school maintaining a course of instruction of not less than four terms of eight months each, that gives instruction in the subjects of the examination required,

in the Act, with the necessary teaching force, and possess and utilize laboratories, equipment and facilities for proper instruction in all of "said subjects.") Such medical school need not be approved by the American Medical Association as is required in some other states, such as Maryland. The Texas State Board of Medical Examiners recognizes graduates of medical schools not on the A.M.A. approved list. (See testimony of Dr. Crabb and Dr. Denman.)

The Act requires the applicant for licensure to successfully complete an examination in anatomy, physiology, chemistry, surgery, obstetrics, pathology, bacteriology, histology, diagnosis, gynecology, hygiene, and medical jurisprudence.

The Act excludes from its purview certain persons: armed forces and federal government personnel in the performance of their official duties and who are not engaged in private practice in Texas; practice by certain licensed out-of-state practitioners who come into the state for consultation only; masseurs, optometrists, chiropodists, chiropractors, dentists, nurses, and certain religious practitioners. The latter seven of this group are excluded so long as they are properly licensed by their respective regulatory Boards, if any. Also, their practice must be strictly confined to their specific sphere of activity and to specified portions of the anatomy upon which they may work if there is no general treatment activity.

The Act defines the practice of medicine as follows:

> "Article 4510: Any person shall be regarded as practicing medicine within the meaning of this law:

"(1) Who shall publicly profess to be a physician or surgeon and shall diagnose, treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof; (2) or who shall diagnose, treat or offer to treat any disease or disorder, mental or physical or any physical deformity or injury by any system or method and to effect cures thereof and charge therefor, directly or indirectly, money or other compensation; provided, however, that the provisions of this Article shall be construed with and in view of Article 740, Penal Code of Texas, and Article 4504, Revised Civil Statutes of Texas as contained in this Act."

The Act recognizes the different "schools" of medical thought, and carefully provides measures to insure that there will be no discrimination as between the different "schools." Article 4495, containing qualifications for the members of the Board, provides that to be eligible, the prospective member must have his diploma from ". . . a legal and reputable college of medicine *of the school to which said practitioner shall belong.*" (Emphasis added) Also, that Article provides ". . . no school shall have a majority representation on said board." Article 4504 provides: "Nothing in this chapter shall be construed so as to discriminate against any particular *school or system* of the medical practice. . . ." (Emphasis added)

This admonition against discrimination has been carried out by the Board as will be seen by examining the list of present members of the Board. The Board contains osteopathic, allopathic (or regular), eclectic, and homeopathic physicians. Should any naturopathic physician qualify under the Medical Practice Act,

he probably would have an almost automatic appointment to the Board so as to insure the broad representation envisioned by the Act.

The Act carefully provides measures to insure against discrimination in the enforcement of the Act and provides for full judicial review of actions of the Board. Also, the Texas Constitution provides that the legislature shall not discriminate between "schools" in any law passed. Article XVI, Section 31 of the Constitution of Texas provides:

> "The legislature may pass laws prescribing the qualifications of practitioners of medicine in this State, and to punish persons for malpractice; but *no preference* shall ever be given by law to any schools of medicine." (Emphasis added)

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In the

Supreme Court of the United States

OCTOBER TERM, 1962

No. 543

CHARLES D. STUART, *et al.*,

Appellants,

v.

WILL WILSON, ATTORNEY GENERAL OF TEXAS,

and

TEXAS STATE BOARD OF MEDICAL EXAMINERS,

and

HENRY WADE, DISTRICT ATTORNEY OF DALLAS COUNTY, TEXAS,

Appellees.

On Direct Appeal From the United States District Court for the Northern District of Texas, Dallas Division

APPELLANTS' BRIEF OPPOSING APPELLEES' MOTION TO AFFIRM OR DISMISS

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---

APPELLANTS' BRIEF OPPOSING APPELLEES' MOTION TO AFFIRM OR DISMISS

To the Honorable Chief Justice and Justices of the Supreme Court of the United States:

Come Now the Appellants under the provisions of Rule 16 and file herewith their Brief opposing the Appellee's Motion to Affirm or Dismiss, and therefor say as follows:

This case is before this Honorable Court on a direct appeal from a judgment rendered by a specially constituted

three-judge district Court. As I view it, under Rule 16 of this Honorable Court, this Honorable Court by its own Rules will not receive or entertain a Motion to Dismiss this appeal. I say this because apparently paragraph 1. (c) is the only paragraph under Rule 16 which would pertain to this case. Paragraph 1. (a) of Rule 16 provides that "The Court will receive a Motion to Dismiss any appeal on the ground that the appeal is not within the jurisdiction of this Court, because not taken in conformity to statute or to these Rules." I respectfully suggest that this appeal is appropriately taken in accordance with the Statutes and these Rules. In particular, I would like to mention Section 1253 of Title 28, U.S.C.A., which specifically provides that "Any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." This is the type of appeal in this case and the jurisdiction of this Honorable Court over this case is discussed at length on pages 3, 4, 5, 6 and 7 of the Jurisdictional Statement; and Appellants respectfully refer this Honorable Court to such pages in the Jurisdictional Statement rather than taking this Honorable Court's time by repeating the contents thereof again in this Brief.

Therefore, it would appear that paragraph 1. (c) of Rule 16 would be the only provision pertaining to Appellees' Motion that this Honorable Court would even consider. Such paragraph 1. (c) provides that "The Court will re-

ceive a Motion to *Affirm* the judgment sought to be reviewed on Appeal from a federal court on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument." (Italics mine.)

Thus, it would appear to the Counsel for Appellants that the only question raised by the Appellees' Motion is whether the Court should at this time affirm the Trial Court's judgment on the ground that it is manifest that the questions on which the decision of the Cause depends are so unsubstantial as not to need further argument. Let me say this: The questions on which the decision of this cause depend are so substantial that the very foundations of our system of free enterprise depends on the answers to them; the very right to follow and pursue a lawful occupation without unreasonable governmental interference is involved; the very right and freedom of medicine, a basic subject that touches every citizen of the United States of America, is involved. As set forth on pages 7 through 23 of the Jurisdictional Statement there are some 52 questions presented by this Appeal. And permit me to say this: The Supreme Court of Idaho on April 8, 1959, in the Case of *State of Idaho ex rel., State Board of Medicine of the State of Idaho, S. M. Poindexter, Chairman v. David Smith, 337 Pac. 2d 938-942*, held squarely in the affirmative on one of the principal questions involved in the case before this Bar. In the *Idaho* case, the Supreme Court said, "The right to follow a recognized occupation is a right protected by the Constitutional guarantees of liberty. Fourteenth

Amendment to the Federal Constitution * * *. To require one desiring to engage in the practice of Naturopathy to meet the requirements prescribed for physicians and surgeons would be an unreasonable regulation of a recognized calling, unnecessary for the public's protection. It would in most, if not all, instances amount to prohibition. So far as Section 54-1802, I.C. *(Portion of Idaho's Statute regulating the general practice of medicine and surgery or allopathy which is similar to Texas Statute)* (Reference in parenthesis is mine) affects the practice of Naturopathy, the act is unconstitutional and void." What question could be more substantial than where a State Supreme Court has answered such question directly in favor of these Appellants; and as this Honorable Court will see from the many substantial questions presented in the Jurisdictional Statement, it is manifest that this case should be heard on the merits by this Honorable Supreme Court.

If the Court will permit me, I would like to make a brief comment relative to the cases cited by the Appellees in their Motion.

The cases cited by Appellees generally hold that Naturopathy is classified as a form of practicing medicine, and that naturopaths have to be licensed as physicians and surgeons before they can practice naturopathy. Appellants agree that Naturopathy is a form of medicine, although both the President and the Secretary of the Texas State Medical Board were reluctant to admit in their testimony that Naturopathy was a form of medicine. Appellants submit by the very definition of Naturopathy, which defini-

tion is fully set forth on page 33 of the Jurisdictional Statement, Naturopathy is a limited, narrow field or segment of the practice of medicine. Although, more properly, it should be referred to a limited, narrow field or segment of the *healing art*. It is actually a limited school of medicine, as compared with eclectics, homeopaths, allopaths, osteopaths and chiropractors. Appellants agree that the State can regulate the practice of medicine and naturopathy; and Appellants seek such regulation. This leads us to the very bone of contention in this case: *Is it unreasonable for the State of Texas to require a Naturopath to qualify for and obtain a license as a general medical practitioner and surgeon (an allopath) before the Naturopath can practice his well recognized, limited field of the healing Art?*

I believe that it is fundamental that a State may not prohibit the practice of medicine or surgery; but that the State, under its police power, may regulate, within *reasonable* bounds, for the protection of the public health the practice of either by defining the qualifications which one must possess before being permitted to practice the same. *Hawkes v. People of State of New York, 170 U. S. 189, 18 S. Ct. 573, 42 L. Ed. 1002; Dent v. State of West Virginia, 129 U. S. 114, 9 S. Ct. 231, 32 L. Ed. 623.*

The case of *England, et al. v. La. State Board of Medical Examiners, et al. (Fifth Circuit—Orig. Op. Sept. 9, 1958), 259 Fed. 2d 626 (Pet. for reh. den. Jan. 23, 1959), 263 Fed. 2d 661 (Pet. for Writ of Certiorari den., June 1, 1959), 359 U. S. 1012, 3 L. Ed. 2d 1036; 79 S. Ct. 1149;* holds that no court can supersede the authority of the State legisla-

sure, but that it can determine if a law regulating the practice of an allegedly useful profession is so arbitrary and unreasonable as to amount to a denial of due process or of the equal protection of the laws under the Fourteenth Amendment. *England* further holds that no court, state or federal, has held that a state legislature has *unlimited* power or authority even with respect to subjects such as the health and welfare of the people of the state; and that although the primary responsibility rests with the state legislature, the courts have a solemn and inescapable duty of deciding whether state action is so arbitrary and unreasonable as to be unconstitutional. In response to the Appellees' contention that the Appellants herein can take the examinations for and qualify as general medical practitioners and surgeons and then practice as naturopaths, the *England* case says the answer is that the mere form of the statutes cannot justify or excuse the deprivation of one's rights under the Constitution of the United States; that the "practice of medicine" is defined broadly enough to apply to dentists, nurses and pharmacists; and that each of these professions is protected by a special statute, but if it was not, would anyone deny the jurisdiction of a federal district court to protect a dentist, a nurse, or a pharmacist in the practice of his or her useful profession or calling?

So it is with the Naturopaths. In the case at bar the evidence overwhelmingly showed that the practice of naturopathy and the practice of general medicine and surgery are separate and distinct; the Appellees' Witnesses who were instructors at the Southwestern Medical School (a recog-

nized general medical and surgical school testified that they did not instruct in Naturopathy, and knew little, if anything, about it. The Secretary and President of the Texas State Board of Medical Examiners testified that they did not examine a person to determine if he was qualified to practice Naturopathy; that they examined on general medical and surgical subjects; that they knew little, if anything, about Naturopathy; and that they did not issue a Certificate to practice Naturopathy. The witnesses for the Appellants testified at length as to what Naturopathy was, distinguished it from the general practice of medicine and surgery, and using an exhibit, which was a copy of the official examination given by the Texas State Board of Medical Examiners, explained in detail why it would be unfair, unreasonable and arbitrary to require a Naturopath to pass the same before he could practice Naturopathy, and why such examination had no reasonable, rational or substantial relation to the practice of Naturopathy; and that such examination was for those who desired to practice general medicine and surgery or allopathy. Therefore, the evidence and law in this case definitely and overwhelmingly reveals that it is unreasonable for Appellants to have to qualify for and obtain a general medical and surgeons license before they can practice their well-recognized, narrow, limited field or school of the healing arts known as Naturopathy.

WHEREFORE, Because the question of health affects all citizens of the United States, and the limited school of the healing art of Naturopathy is basically so important,

and which school could some day become the most important method of treatment in the United States; and because such limited school of the healing art should not be unthoughtfully annihilated at this time by unreasonable and arbitrary regulations of its practitioners by a State Statute which is unconstitutional in so far as it applies to them, the Appellants pray that the Appellees' Motion to Affirm or Dismiss be in all things overruled; or in the alternative, that the consideration of the question of Jurisdiction be postponed until the hearing of the case on the merits; and Appellants further pray for the same relief on the merits as fully set forth on pages 72 and 73 in the Jurisdictional Statement.

Very respectfully presented,

JAMES L. MCNEES, JR.,
407 Davis Building,
1309 Main Street,
Dallas, Texas.
Counsel for Appellants.

PROOF OF SERVICE

I, James L. McNees, Jr., the Counsel for Charles D. Stuart, et al., Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 8th day of January, A. D. 1963, I served copies of the foregoing Appellants' Brief Opposing Appellees' Motion to Affirm or Dismiss on the Appellees by mailing two copies thereof in a duly addressed envelope, with Air Mail postage prepaid, to Tom I. McFarling, Esq., the Counsel of Record for Appellees, with such envelope addressed to Honorable Tom I. McFarling, Special Assistant Attorney General of Texas, Capitol Station, Austin, Texas.

JAMES L. MCNEES, JR.

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In the

Supreme Court of the United States

OCTOBER TERM, 1962

No. 543

CHARLES D. STUART, ET AL.,
Appellants,

v.

WILL WILSON, ATTORNEY GENERAL OF TEXAS,
and
TEXAS STATE BOARD OF MEDICAL EXAMINERS,
and
HENRY WADE, DISTRICT ATTORNEY OF
DALLAS COUNTY,
Appellees.

On Direct Appeal from the United States District Court for the Northern District of Texas, Dallas Division

APPELLANTS' PETITION FOR REHEARING

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APPELLANTS' PETITION FOR REHEARING

To the Honorable Supreme Court of the United States:

Come now the Appellants in the above styled and numbered cause, and move the Court to set aside its judgment rendered herein on the 21st day of January, A.D. 1963, and

in lieu thereof to note probable jurisdiction of this cause, and set the same down for the submission of briefs on the merits and hearing by oral arguments.

The basis of this motion is that it is hoped by the Appellants in this case that their long and hard-fought battle to preserve their right to practice their honorable and lawful profession will not be disintegrated without a full hearing before this Honorable Body. These Appellants fervently believe that this Honorable Supreme Court of the United States is a protector of the rights of the citizens of the United States under the Fourteenth Amendment to the Constitution. These Appellants do not believe that this Court, after a full hearing hereon on the merits, will consciously permit the State of Texas by an unreasonable law, to deprive these Appellants of their constitutional rights to follow a lawful profession.

These Appellants have a common law right to practice the healing art known as Naturopathy; and no state can deprive them of this right by an unreasonable regulation. These Appellants want a reasonable regulation; but they do not want an unreasonable regulation which amounts to a deprivation of their rights and a destruction of their field of practice.

Naturopathy is not a neglected profession, and Naturopathic practitioners are multifold. Statistics show that there are some 70,000 natural healers in the United States; and this Honorable Court may be aware of the recent establishment in Washington, D. C., of the Schipell Foundation for the advancement of Naturopathy.

These Appellants with all due sincerity and in full recognition of the construction of laws, humbly submit to this Court that the Basic Science Law, Article 4590c, of the Revised Civil Statutes of the State of Texas, 1925, as amended to date, contains the basic uniform minimum standards for anyone who desires to practice any branch of the healing arts in the State of Texas. In the same vein, these Appellants submit to this Honorable Court that the Texas Medical Practice Act, Articles 4495-4512, Revised Civil Statutes of the State of Texas, 1925, as amended to date, is the prescription of qualifications for those persons who desire to practice as general medical practitioners and surgeons or allopaths, and is in no wise the basis for establishing the qualifications for those who desire to practice the natural healing art known as Naturopathy. (See field and scope of Naturopathy in definition thereof on page 33 of the Jurisdictional Statement.)

These adherents of the drugless, non-surgical, natural method of healing arts desire to aleviate and heal the pain and suffering of mankind, without the use of toxic drugs, X-ray and surgery. Their method of the healing arts has been very successful. This method of natural treatment has been successful in many instances after the general medical practitioners and surgeons or allopaths have failed in their use of toxic drugs, X-ray and surgery.

Why should the Naturopaths be prevented from helping mankind by the naturopathic system of treatment by an arbitrary state law which requires Naturopaths to study, train for, and be examined on subjects required for general

medical practitioners and surgeons or allopaths, before such Naturopath can follow his method of the healing art. The very purpose of the Fourteenth Amendment is to prevent just this thing, and to permit the equal rights to practitioners of the different methods of the healing arts. And why should mankind suffer from this unequal treatment by an arbitrary state law? It is no secret that the allopathic school of medicine is attempting to destroy their natural competitor, the Naturopathic physician. The allopaths believe in the use of toxic drugs, X-ray and surgery as the best method of the healing art. The naturopaths feel just as strongly that the application of natural food substances, which are naturally assimilable by the body, to restore a proper chemical balance to the body and manipulation and other natural treatments, are the best methods of treatment to cure a person or to maintain health. Each has his right to practice; and the Citizens of the United States of America have their equal rights to choose which treatment they prefer.

It is imperative that this Honorable Court grant an open and full oral hearing in this case on the merits. This Honorable Court, which I like to refer to as the People's Court, the protector of Citizen's rights, is the last hope for the preservation of the natural healing art.

I realize that in many instances, the cause of Naturopathy is unpopular. I attribute two reasons for this: First, people generally know little or nothing about Naturopathy; and second, the American Medical Association wants Naturopathy eliminated as a competitor.

I am acutely aware of the disabuse one receives from fostering the cause of Naturopathy. I have many friends who are general medical practitioners and surgeons or allopaths, and they scoff at the idea of Naturopathy; and I have lay friends who think of Naturopathy as quackery. But I think the cause of Naturopathy is more important than a lawyer's disabuse.

Reflecting back for a moment on the reasons for the unpopularity of Naturopathy, I think that ignorance of Naturopathy is the first reason to elaborate upon. Usually if there is something that a person knows little or nothing about, he is generally afraid of such subject and generally dislikes it. I have had skeptics to ask me what is Naturopathy, how do you spell it, how do you pronounce it? And after it is explained to them, they begin to understand what it is, and the cloak of mystery is lifted and they begin to like what they know about Naturopathy. In many instances, these same skeptics will say, "I know someone who was cured by someone like that;" and many times I have heard people say that they know of a person cured by a natural healer after the drug doctors and surgeons or allopaths had given up. Therefore, I believe that once Naturopathy is fully understood by laymen generally, it will actually be a popular method of the healing art rather than being tainted with its present unpopularity.

Let us hark back for a moment to the attitude of the American Medical Association as the second reason for the unpopularity of Naturopathy. As the evidence in this case shows, no one but an allopath can be a member of the Ameri-

can Medical Association. I think this Honorable Supreme Court will take judicial notice of the fact that the American Medical Association is a powerfully influential body, and that it and its local organizations and societies wield a tremendous influence on the public and upon the legislatures and legal bodies. This allopathic association or fraternity naturally believes that their ideas are best, that their thoughts are best, that everyone else should conform to their rules, philosophies, tenets and teachings. This is a natural desire. They want the public to recognize them as the one and only kind of doctor, and likewise, they want the legislature to recognize them as the one and only kind of doctor.

Well, I just don't believe our system of government will tolerate this. The practice of medicine is not an exact science by any means. Let me point out one principal difference between an allopath and a naturopath as far as theory is concerned.

An allopath believes that illness in the human body is caused by the invasion of the human body by bacteria from without; and that to cure the illness the bacteria must be destroyed. At the very opposite of the pole, the Naturopath believes that all bacteria in one form or another and in one state or another is always present and existing in every human body, and that an illness in the human body is caused by an imbalance of chemicals and abnormalcy within the body for any reason which permits the harmful bacteria to become dominant in the human body. Now this may seem to concern the most simple and basic theory concerning the cause of illness; however, this conflict of opinion between

the two schools of thought has never been resolved or proved one way or another. Without question, I think we will all agree that Naturopathy is a competitor of the allopath or general medical practitioner and surgeon. The naturopath wants to use natural treatments to cure an illness, and he would not recommend toxic drugs, X-ray, or surgery except as a last resort. The general medical practitioners and surgeons or allopaths do not like this type of competition; they favor the giving of toxic drugs and the use of X-ray and surgery as the way to treat and cure illnesses; naturally, they want the public image of the naturopath to be bad, and they want to foster and obtain laws that will in effect keep these competitors from practicing.

But I say to this Court, with all earnestness and humility, that each school of medicine or the healing art has its right to be recognized, practiced, and reasonably regulated.

These two schools of medicine can co-exist. One of the favorite questions people use to taunt me is, "If your wife were sick, would you take her to an allopath or a naturopath?" My answer to this is that it would make no difference, unless in the beginning there was some particular reason to see one or the other. If I took her first to a naturopath, and he could do her no good, I would then take her to the general medical practitioner and surgeon or allopath, to see what he could do. On the other hand, if I took her first to the general medical practitioner and surgeon or allopath, and he could do no good, I would take her to a naturopath. The two schools of medicine have a different theory and system for curing people. This stems from their basic dif-

ference in concept as to what causes disease, as I have pointed out in the basic bacteria theory hereinabove.

May I please ask the Court's indulgence to bear in mind that when I speak of illness, I am not speaking of accidents, external and internal injuries and the like, which usually call for narcotics as pain relievers, and surgery for purely mechanical repair of portions of the human body, but I do speak of illnesses inherent to the human body.

Graduating from the basic bacteria theory outlined hereinbefore, the naturopath and allopath differ in the method of treatment. The naturopath, believing that a body in its natural state, is healthy, believes that if a state of illness comes into being, it is the result of the body becoming imbalanced and thus, unhealthy. The naturopath believes that since the human body is composed only of chemicals in certain comparative quantities, that an imbalance of these chemicals will cause an imbalanced or unhealthy body. The naturopath believes that by examining the human body and taking and analyzing samples and specimens taken from the body that he can determine where the imbalance of chemicals lies, and that by a prescription of chemicals through natural foods naturally assimilable by the body, or other natural treatment, he can create more or reduce certain chemical contents of the body, and thus place the chemical contents of the human body back in balance and thus restore it to its natural state and healthful condition. And in conformity with this theory, the naturopath believes that the giving of toxic drugs is actually unnatural and harmful to the human body and simply presents a foreign

substance in the body which actually places a greater burden on the body because the body then has to eliminate such foreign matter from the body before the ill person can become well; and likewise, the naturopath looks upon surgery as not a cure *per se* of a natural inherent illness, but a mechanical removal of a portion or an organ of the body or a repair of the same; however, in consonance with this belief, the naturopath does believe that in some instances surgery is necessary to alleviate a mechanical pain or suffering, or to foster a cure of a mechanical illness. Incidentally, the naturopath does not treat or offer to treat communicable, quarantinable and contagious diseases. These do not come within the scope of natural methods of treatment.

On the other hand, the allopath in compliance with his basic theory, that disease of the human body is caused by the invasion of bacteria, treats a patient symptomatically. The allopath attempts to destroy or kill the invading bacteria by attacking the symptoms with toxic drugs, X-ray or surgery. The allopath thus devotes his attention primarily to the effect of the disease, rather than the cause.

And congruously with the naturopath's opinion as above referred to that the introduction of toxic drugs are harmful to the human body, the allopaths themselves are being faced with iatrogenic diseases. The allopaths are finding in a vast majority of instances in their present day practice of medicine that they are having to treat diseases caused by the use or overdose of toxic drugs introduced by the allo-

paths' prescription. This is an alarming situation, and the allopaths themselves are becoming conscious of the situation caused by the use of their own toxic drugs. In many instances these toxic drugs, which many times are popularized by the powerful and lucrative drug industry, cause damage to the blood producing organs of the body, such as the liver and bone marrow, and are carcinogenic agents or malignant producing in their action in that they are destructive of the anti-growth hormones of the body. This also spills over into surgery, such as adhesions caused by surgery and illnesses caused by the unnecessary removal of vital organs of the body.

Personally, and this is my opinion only, I think that the basic naturopathic theory of removing the cause of the disease and thus eliminating the effects thereof is a better basic philosophy than the symptomatic treatment followed by the allopaths.

But here again, with all due respect and humility to this Honorable Court, let me urge upon this Honorable Court that the two schools of medicine should be allowed to co-exist; and that Naturopathy should not be struck down, simply to permit allopathy to exist exclusively. Who knows, the basic principles, teachings and tenets of Naturopathy may someday emerge as more popular than the allopathic method of treatment; but, be that as it may, there is a definite need now, and there will continue to be in the future, for both schools and theories of medicine; and although

they may be diametrically opposed to each other on many theories, basics and principles, it is necessary to have them both, because when one fails, perhaps the other can save, and vice-versa.

And consistent with this uncontradictable position, I think that we must all agree that an examination to determine the proficiency of one aspiring to practice allopathy would be an unreasonable examination to determine the qualifications of one aspiring to be a naturopath; and the contrary is likewise true, that is, an examination given to determine the proficiency of one aspiring to be a naturopath would be an unreasonable examination to give one aspiring to be an allopath. To be fair and reasonable, each school should have its own qualifications and its candidates should be given an examination that befits and pertains to their particular school, and each should have a board of qualified examiners to give such examinations.

CONCLUSION

In conclusion, these Appellants respectfully submit to this Honorable Supreme Court of the United States that they have a just cause, that they have a right to practice a lawful profession, that this right is guaranteed to them by the Fourteenth Amendment to the Constitution of the United States, and they cannot be deprived of this right by having to submit to an arbitrary law which prescribes qualifications for the method of practice of general medical

practitioners and surgeons or allopaths as set forth by Articles 4495-4512 of the Revised Civil Statutes of the State of Texas, 1925, as amended to date, because the prescription of qualifications therein stated are for the general medical and surgical practitioner or allopath and are not reasonable qualifications for one desiring to practice the natural art of healing followed and practiced by the Appellants herein, who are naturopaths. These Appellants respectfully submit that it is the duty of this Court to protect them from the unreasonable and arbitrary interpretation placed upon the aforesaid Texas Medical Practice Act by the Appellees herein and the Courts of the State of Texas and albeit by the Act itself, requiring Appellants to become licensed as general medical practitioners and surgeons or allopaths before they can practice the natural method of treatment as naturopaths; and that this Court should find that the aforesaid Texas Medical Practice Act is unconstitutional insofar as it applies to the Appellants as naturopaths in requiring the Appellants to qualify as general medical practitioners and surgeons or allopaths before they can practice their natural method of treatment as naturopaths because such requirements are unreasonable, and that the State of Texas does have the right under its police power to pass a reasonable regulation of the practice of natural healers or naturopaths; and therefore, these Appellants pray that this Honorable Court set aside its judgment of January 21, 1963, and grant a rehearing herein, and that this Honorable Court note probable jurisdiction in this case, and that this Honorable Court require briefs to be

submitted on the merits in this case, and that this Honorable Court set this cause down for oral argument.

Respectfully submitted,

JAMES L. MCNEES, JR.,
1309 Main Street,
Dallas, Texas,
Counsel for Appellants.

CERTIFICATE

The undersigned, James L. McNees, Jr., Counsel of Record for Appellants herein, does hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

JAMES L. MCNEES, JR.,
Counsel for Appellants.

PROOF OF SERVICE

I, James L. McNees, Jr., the Counsel for Charles D. Stuart, et al., Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the day of February, A.D. 1963, I served copies of the foregoing Appellants' Petition for Rehearing on the Appellees by mailing two copies hereof in a duly addressed envelope with Air Mail postage prepaid, to Tom I. McFarling, Esq., Counsel of Record for Appellees, with such envelope addressed to Honorable Tom I. McFarling, Special Assistant Attorney General of Texas, Capitol Station, Austin, Texas.

JAMES L. MCNEES, JR.